

STATE BOARD OF ELECTIONS

STATE OF ILLINOIS

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EXECUTIVE DIRECTOR
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BOARD MEMBERS
Jesse R. Smart, Chairman
Charles W. Scholz, Vice Chairman
Harold D. Byers
Betty J. Coffrin
Ernest L. Gowen
William M. McGuffage
Bryan A. Schneider
Casandra B. Watson

AGENDA

State Board of Elections
Sitting as the Duly Authorized
State Officers Electoral Board
Thursday, January 16, 2014
1:00 p.m.

2329 S. MacArthur Blvd.
Springfield, Illinois
and via videoconference
James R. Thompson Center – Suite 14-100
Chicago, Illinois

Call State Board of Elections to order.

1. Recess the State Board of Elections and convene as the State Officers Electoral Board.
2. Approval of the minutes from the December 30 SOEB meeting.
3. Consideration of objections to candidate nominating petitions for the March 18, 2014 General Primary Election;
 - a. *Wharton, Smith & Wang v. Hardiman & Donald*, 13SOEBGP511;
 - b. *Gray, Jr. v. Madonia*, 13SOEBGP102.
4. Objections/Candidate withdrawn – informational.
5. Other business.
6. Recess the State Officers Electoral Board until February 19, 2014 at 10:30 a.m. or until call of the Chairman whichever occurs first.
7. Reconvene as the State Board of Elections.
8. Other business.
9. Adjourn until February 19, 2014 at 10:30 a.m. or until call of the Chairman whichever occurs first.

STATE OFFICERS ELECTORAL BOARD

Special Meeting

Monday, December 30, 2013

MINUTES

PRESENT:

Jesse R. Smart, Chairman
Charles W. Scholz, Vice Chairman
Harold D. Byers, Member
Betty J. Coffrin, Member
Ernest L. Gowen, Member
William M. McGuffage, Member
Bryan A. Schneider, Member
Casandra B. Watson, Member

ALSO PRESENT:

Rupert Borgsmiller, Executive Director
James Tenuto, Assistant Executive Director
Steve Sandvoss, General Counsel
Amy Calvin, Administrative Assistant II

The special meeting of the State Officers Electoral Board was called to order via videoconference at 1:00 p.m. via videoconference with all Members present. Chairman Smart, Vice Chairman Scholz and Members Byers and Coffrin were present in Springfield and Members Gowen, McGuffage, Schneider and Watson present in Chicago.

The first item on the Agenda was consideration of subpoena requests in connection with objections to candidate nominating petitions of established party candidates. The General Counsel presented *Wharton, Smith & Wang v. Hardiman & Donald*, 13SOEBGP511 and reviewed the matter. He concurred with the hearing officer recommendation to grant the objector's request for subpoenas for all individuals except Thomas Mastin. Burt Odelson was present on behalf of the objectors and Randy Crumpton was present on behalf of the candidates. Mr. Odelson concurred with the recommendation of the hearing officer but also requested that a subpoena be issued for Thomas Mastin. Mr. Crumpton did not concur with the recommendation and said there was not sufficient evidence to prove a pattern of fraud. He felt this was a fishing expedition on the part of the objectors and the circulators should not be expected to appear. Discussion ensued regarding the results of the records examination. Member McGuffage moved to accept the recommendation of the General Counsel and grant the subpoena requests for the twenty-one individuals listed. Member Coffrin seconded the motion which passed by roll call vote of 8-0.

The General Counsel presented a subpoena request for *Mullen v. Goel*, 13SOEBGP514 and reviewed the matter. He did not concur with the hearing officer recommendation to grant subpoenas for three of the candidate's circulators because he felt the sustain rate in the records exam did not indicate a pattern of fraud. He did concur with the hearing officer recommendation to grant the subpoena request for the notary public who allegedly failed to sign the petition sheets. John Fogarty was present on behalf of the objector and Anish Parikh was present on behalf of the candidate. Mr. Fogarty concurred with the hearing officer recommendation concerning the notary public and withdrew the subpoena requests for the three circulators. He indicated that notary publics are required by law to manually affix their signature to documents and the use of a stamp is not sufficient. Mr. Parikh concurred with the hearing officer recommendation pertaining to the three circulators; however, he asked that the subpoena

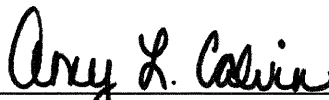
request for the notary public be denied. After discussion, Member McGuffage moved to accept the recommendation of the General Counsel and grant the subpoena request for the notary public. Member Watson seconded the motion which passed by roll call vote of 8-0.

The General Counsel indicated that a listing of objections/candidates withdrawn would be e-mailed to the Board after the meeting adjourns.

It was also noted that Jane Gasperin will e-mail the Board after 5:00 p.m. on December 31 informing them if any objections were filed to candidates who filed nominating petitions during the December 16-23, 2013 filing period.

With there being no further business before the State Officers Electoral Board, Member Byers moved to recess until January 3, 2013 (if necessary), or until call of the Chairman. Vice Chairman Scholz seconded the motion which passed unanimously. The meeting recessed at 1:50 p.m.

Respectfully submitted,



Amy Calvin, Administrative Assistant II



Rupert Borgsmiller, Executive Director

Wharton et al v. Hardiman/Donald
13 SOEB GP 511

Candidate: Tio Hardiman/Brunell Donald

Office: Governor/Lt. Governor

Party: Democratic

Objector: Michelle Wharton, Brenda Smith, Ling-Yi and Margot Wang

Attorney For Objector: Burt Odelson & James Nally

Attorney For Candidate: Randy Crumpton

Number of Signatures Required: 5,000 – 10,000

Number of Signatures Submitted: 9,342

Number of Signatures Objected to: 5,159*

Basis of Objection: 1. The Nomination papers contain an insufficient number of valid signatures. Various objections were made against the petition signers including: "Signer's Signature Not Genuine," "Signer Not Registered at Address Shown," "Signer Resides Outside of the District," "Signer Signed Petition More than Once." 2. The Nomination papers contain petition sheets which bear a circulator affidavit which is not signed by the circulator. 3. The Nomination papers contain petition sheets which bear a circulator's affidavit that is not signed by the circulator in his/her own proper person and are forgeries. 4. The Nomination papers contain petition sheets which bear a circulator affidavit on which the circulator's address is missing or incomplete. 5. Several of the circulators provided addresses where they do not reside and/or are not registered at. 6. The Nomination papers contain petition sheets which bear a circulator's affidavit which is not properly sworn to before a Notary Public or other appropriate officer. 7. One of the petition pages (page 465) contains a notarization date of April 11, 2013, which is more than 90 days prior to the last day to file petitions. 8. The Nomination papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid. 9. Several sheets contain forgeries, or show evidence that the same person signed all the names on the sheet (commonly referred to as "roundtabling") 10. Petition sheet 2 is a photocopy of Petition sheet 50 and as such both must be stricken. 11. Candidate Donald's Statement of Candidacy is false in that she was not a registered voter at the address sworn to on her Statement of Candidacy at the time of signing and swearing to the Statement. 12. That every signature on every sheet is not in compliance with the Election Code because the address of each and every signer does not contain the State of residence.

Dispositive Motions: Candidate: Motion to Strike and Dismiss Objector's Petition; Candidate's Rule 9 Motion; Objector: Response to Motion to Strike and Dismiss Objector's Petition; Motion for Rule 9 Hearing;

Binder Check Necessary: Yes

Hearing Officer: Barbara Goodman

Hearing Officer Findings and Recommendation:

Records Exam

A records examination commenced on December 19, 2013 and was completed on December 20, 2013. The examiners ruled on objections to 5,159 signatures. 3,270 objections were sustained leaving 6,072 valid signatures, which is 1,072 signatures more than the required 5,000 minimum number of signatures. (However, see *paragraph below.)

Candidate's Motion to Strike and Dismiss

The Hearing Officer considered the Candidate's Motion to Strike and Dismiss. She recommends granting the Motion as to Paragraphs 11, (circulator deficiency) 17, (pattern of fraud) 30 (circulator, notary and forgery issue) and 31 (failing to list voters' state of residence) on the grounds that they are confusing and/or lack specificity and are not clear, thereby depriving the candidate of adequate notice of what he is being called on to defend, and recommends denying the Motion with respect to Paragraphs 20, 22, 23 (which deal with the validity of Ms. Donald's Statement of Candidacy) and Paragraphs 15, 16, 21, 24, 25, 26, 27, 28 and 29 which make general allegations regarding circulators, their residency and notarization issues which attempt to establish a pattern of fraud. The recommendation to deny the Motion is primarily based on the Objector establishing a legitimate question of fact, and having pled the allegation with sufficient specificity so as to give the Candidate the requisite notice of the nature of the allegation.

Candidate Donald's Statement of Candidacy

The Hearing Officer next considered the challenge to Candidate Donald's Statement of Candidacy. The Objector is challenging the validity of such Statement, and therefore her eligibility to remain on the ballot based on her not residing or being a registered voter at the address on said Statement. Ms. Donald's testimony and documentary evidence presented at the evidentiary hearing established that she did reside at the address listed on her Statement (ie: 913 E. 54th St. in Chicago) at the time of its filing. The next issue considered was whether she was a registered voter at that address at the time of filing. The Hearing Officer considered the language of Section 7-10 of the Election Code, and noted the statutory requirement that the candidate must swear or affirm that they are a "qualified primary elector" of the requisite political party. The language in the Statement itself that asserts that the candidate is a "qualified voter therein" (referring to the candidate's listed address) is considered to be part of a suggested form, used as a template by perspective candidates and is therefore directory. (See O'Connor v. Cook County Officers Electoral Board.) Only the "qualified primary elector" language is considered a mandatory statutory requirement. Therefore, the relevant issue was whether Ms. Donald was a qualified primary elector of the Democratic Party. The Hearing Officer then turned to the relevant caselaw (specifically the decision in Cullerton v. DuPage Officers Electoral Board), which held that at a minimum, a qualified primary elector must have been eligible to vote at the most recent Primary Election immediately preceding the filing of the Statement of Candidacy. She therefore concluded that there was no statutory requirement that a candidate be registered to vote at the address listed on the Statement of Candidacy. The next issue then was to determine whether Ms. Donald was a qualified primary elector at the time of her filing her Statement of Candidacy, that is, had she been eligible to vote in the most recent Primary Election preceding her filing. The Hearing Officer concluded that because Ms. Donald did not have a valid registration at the time of the General Primary, she could not have voted at such Primary, and therefore was not a qualified primary elector. Because she swore on the Statement of Candidacy that she was, it was a false swearing, which disqualifies her from appearing on the ballot. The Candidate then argued that because the Illinois Constitution establishes the qualifications to hold the office of Governor (Must be a U.S. citizen, at least 25 years of age, and a resident of Illinois for at least 3 years preceding the election), Section 7-10 was unconstitutional because it imposes an additional requirement (being a qualified primary elector). The Hearing Officer declared that it was beyond the authority of the Board (and its appointed Hearing Officer) to declare a statute unconstitutional.

The Effect of Candidate Donald's Disqualification on the Candidacy of Mr. Hardiman

The next issue was whether the disqualification of the Lt. Governor candidate results in Mr. Hardiman being disqualified for the ballot, given the requirement in Section 7-10 that candidates for both offices must appear on one joint petition. The Hearing Officer opined that because that Section did not provide a consequence in the event that one of the joint candidacies was declared invalid, his candidacy should not be adversely affected.

Rule 9 Motions

The Objector filed a Rule 9 Motion challenging staff rulings with regards to the objections to signatures being printed as opposed to written, and therefore being not genuine. Since the Objector failed to specify which sheet and line rulings he was taking issue with, and failed to produce evidence that the staff rulings were in error (other than a general allegation that staff was inconsistent in their rulings and may have been unduly influenced by the turmoil at the examination) she recommends denying the Motion. Given the denial, she felt it unnecessary to consider the Candidate's Rule 9 Motion. (It should be noted that the Candidate's Rule 9 Motion also failed to include evidence that staff rulings were in error.)

Recommendation of the General Counsel: Though the Hearing Officer did an outstanding job of hearing and ruling upon the Motions and in identifying and analyzing the issues, I must disagree with one of her recommendations. I believe that Ms. Donald did not falsely swear on her Statement of Candidacy that she was a "qualified primary voter". I would first note that paragraph 20 and 22 of the Objector's Petition do not allege that Ms. Donald was not a "qualified primary voter". The allegation was that she falsely swore on her Statement of Candidacy that she was a registered voter at the address listed, when in fact she was not so registered. I believe the Hearing Officer was correct when she concluded that Section 7-10 does not mandate that a candidate be registered to vote at the address on the Statement of Candidacy, (relying on the Miller case). As noted, the statute only requires a candidate to be a qualified primary voter, and the Cullerton case cited by the Hearing Officer, defined such voter as having been eligible to vote in the most recent primary election prior to signing and filing the Statement of Candidacy. The most recent primary election would have been the 2012 General Primary Election, held on March 20, 2012. Though the evidence in the record shows that Ms. Donald appears to have resided at the Blackstone address between July 2010 through July of 2012, and her voter registration at the time of the March 2012 Primary Election was at her previous residence on Flournoy, Ms. Donald could still have legally voted at said Primary under the fail-safe voting provisions of the National Voter Registration Act (NVRA) [42 USC 1973gg-6(e)(2)(A)] and the corresponding Rules promulgated by the State Board of Elections [Title 26, Chapter 1, Section 216]. Those provisions allow a voter who has moved more than 30 days prior to an election and who has failed to change their registration, to vote in their previous polling place for Federal Offices only. Though Ms. Donald would have been limited as to which candidates/offices she could have voted for, she could have requested and voted a Democratic ballot at that Primary, which I believe would establish her as a "qualified primary voter" under the Cullerton decision. As such, she did not falsely swear to her qualifications on her Statement of Candidacy, and should not be disqualified from the ballot. With respect to the remainder of the Report, I concur with the recommendations contained therein.

*This total does not include objections based on a person signing more than once. SBE staff were directed by the Hearing Officer to not rule on these objections at the records exam, given the dispute over the proper way to rule upon them. Later in the proceeding, SBE staff ruled on all the duplicate signature objections, and the total number of said objections that were sustained, and that were not previously sustained on a different basis, were subtracted from the total number of presumably valid signatures (6,072) so that a grand total of such signatures could be established for the record. An additional 196 signatures were stricken, reducing the Candidate's signature total to 5,876.

BEFORE THE ILLINOIS STATE OFFICERS ELECTORAL BOARD

Michelle Wharton, Brenda F. Smith)
And Ling-YiMargot Wang)
)
Objector)
)
-v-)
)
Tio Hardiman and Brunell Donald)
)
Candidate)

13 SOEB GE 511

HEARING OFFICER'S REPORT AND RECOMMENDED DECISION

This matter first came to be heard on December 17, 2013. The Objectors appeared through counsel Burton S. Odelson and James P. Nally and the Candidates appeared through counsel Randall Crumpton. A Motion to Strike and Dismiss was filed by the Candidates and a Response to the Motion to Strike and Dismiss was filed by the Objectors.¹ In addition to other matters in the Objectors' Petition, there were allegations to be resolved in a records examination.

A records examination was conducted and the results of the records examination were as follows:

- A. The minimum number of valid signatures required by law for placement on the ballot for the offices in question is 5,000.
- B. The number of purportedly valid signatures appearing on the nominating petition filed by the Candidates total 9,342.
- C. The number of signatures deemed invalid because of objections sustained in the records examination total 3,270.

¹ The matter was set for further hearing on December 27, 2013. However, the building was inaccessible at the time of the hearing because it was on lockdown and it was necessary to reschedule the hearing. The matter was rescheduled for a hearing on the Motion to Strike and Dismiss on January 2, 2014 and on January 3, 2014 for an evidentiary hearing. Because of the weather conditions on January 2, 2014, the hearing was cancelled and a conference call was conducted on that date. The parties were advised that all matters would be addressed at the hearing scheduled on January 3, 2014.

D. The remaining number of signatures deemed valid as a result of the records examination total 6,072.

An issue regarding the manner in which duplicate signatures were being reviewed arose during the records examination and pursuant to order of this hearing officer, the review of the allegations regarding duplicate signatures was postponed until the day of the evidentiary hearing. The review of the duplicate signature allegations was undertaken at the Chicago office of the State Board of Elections on January 3, 2014 and continued until concluded. At the conclusion of this review, an additional 196 signatures were deemed invalid which brought the total valid signatures to **5876**, said number being 876 signatures **above** the statutory minimum.

Thereafter, motions pursuant to Rule 9 of the Board's Rules of Procedure (Rule 9 Motions) were timely filed by both parties.

THE CANDIDATES' MOTION TO STRIKE AND DISMISS

In their Motion to Strike and Dismiss, Candidates seek to strike a number of paragraphs of the Objectors' Petition.

Paragraph 11 of the Objectors' Petition provides as follows:

11. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator in his/her own proper person or not signed at all and is missing the circulator's signature, and such signatures are not genuine and are forgeries and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, "Circulator's signature not genuine", and specifically sheet 476 (white-out name).

Candidates request that paragraph 11 of the Objectors' Petition be stricken as legally insufficient and confusing. A simple reading of the foregoing paragraph establishes that it is confusing, contains numerous allegations and is unclear as to whether it relates only to page 476 or to other pages. As a result, the Motion to Strike said paragraph should be granted.

Paragraph 15 of the Objectors' Petition provides as follows:

15. The Nomination Papers contain petition sheet number 465 which bears a notary's affidavit which states the date as 4-11-13, prior to the first day allowed by law to circulate the petition and is invalid, and every signature on such sheet is invalid.

Candidates request that paragraph 15 be stricken as it clear that there was simply a transposition of numbers in the dates of notarization. Objectors argue that paragraph 15 presents a fact question and is specifically pled. Paragraph 15 is sufficiently pled to put the candidates on notice as to the allegations against which they must defend and presents a fact question. As a result, the Motion to Strike paragraph 15 should be denied.

Paragraph 16 of the Objectors' Petition provides as follows:

16. The Nomination Papers contain Petition Sheets which bear a circulator's affidavit which is false, signed by a Circulator who does not reside at the address given, and every signature on such sheet is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein under the heading 'Circulator does not reside at address shown', and specifically sheets 88, 297, 299 and 394 (no Angela Balls at that address: all of Derrick Jones' sheets who does not state his correct residence address (389, 391, 406, 461. 511, 534, 544, 551, 558, 560 and 562)).

Candidates request that paragraph 16 of the Objectors' Petition be stricken as no evidence or facts were provided to prove the allegations. Objectors argue that paragraph 16 presents a fact question and is specifically pled. Paragraph 16 is sufficiently pled to put the candidates on notice as to the allegations against which they must defend and presents a fact question. As a result, the Motion to Strike paragraph 16 should be denied.

Paragraph 17 of the Objectors' Petition states as follows:

17. The Nomination Papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are those who circulated the sheets in which objections are made in Column B of the Objection and Appendix-Recapitulation Sheets. Specifically, but without limitation, the disregard of the Election code evidenced by the actions of those circulators includes the submission of purported voter' signatures which were not signed by the voters in their own proper persons.

Candidates request that Paragraph 17 be stricken in that it lacks specificity and fails to state fully the nature of the objection. Objectors contend that paragraph 17 is very specific in pleading a pattern of fraud against all circulators who submitted not genuine signatures and that it is a matter of proof at the hearing. Objectors are mistaken. Paragraph 17 as pled, without specific names or sheet numbers, would require the Candidates to search the appendix recapitulation sheets to determine which circulators circulated sheets as described. Paragraph 17 of the Objectors' Petition lacks specificity and the Motion to Strike said paragraph should be granted.

Paragraphs 20, 22 and 23 of the Objectors' Petition state as follows:

20. The Nomination Papers contain a Statement of Candidacy that is false in that the candidate, Brunell Donald, was not a qualified or registered voter at 913 E. 54th Street, Chicago, Illinois, 60615 on November 21, 2013 when she swore to the Statement of Candidacy under oath. At the time of signing and swearing to the Statement, and at the time of filing the Statement of Candidacy (November 25, 2013), Candidate Donald was registered to vote at 5200 S. Blackstone (Apt. #1007), Chicago, Illinois, 60615. The false Statement of Candidacy is a nullity and invalidates the candidacy of Donald.

22. The candidate, Brunell Donald, was not at the time of signing the Statement of Candidacy, a resident and/or registered voter at the address shown on the Statement of Candidacy, as required by law, and thus the Statement of Candidacy is false. Candidate Brunell was a registered voter at 5200 S. Blackstone, #1007, Chicago, Illinois, and must live and reside at that address if she is registered to vote therein.

23. Because of the above-listed irregularity in the statement of Candidacy. The Nomination Papers are invalid in their entirety since, according to¹ Illinois law, nominations for Governor and Lieutenant Governor in the primary election must be submitted together and both candidates must be qualified and eligible to be candidates and hold the offices sought.

Candidates request that Paragraphs 20, 22 and 23 be stricken in that they fail to set forth a legal basis to invalidate the nominating papers and that they are mistaken in their conclusion that the Candidate Donald's Statement of Candidacy is incorrect. Objectors' contend that the foregoing paragraphs go to the truthfulness of the Statement of Candidacy and present a fact

question. Paragraphs 20, 22 and 23 are sufficiently pled and present a question of fact. The Motion to Strike should therefore be denied as to paragraphs 20, 22 and 23.

Paragraph 21 of the Objectors' Petition provides as follows:

21. The Nomination Papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are: Legia King, Jerry Norvell, Leroy Dinkins, Patrice Allen, Timothy Lee, Cynthia Guerrero, Cecil Lyles Jr., Mae McLennen, Clyde Mclemore, Richard Stewart, Andrea Maples, Dwight McConnell, Beverly Smith, Carla Clair, Derrick Jones, Ferial Jackson and Bobby Hamilton.

Candidates request that paragraph 21 be stricken in that it is vague and legally insufficient. Objectors argue that said paragraph is the standard pattern of fraud allegation with a list of circulators in question and that said paragraph presents a fact question. Insofar as the paragraph specifies which circulators are at issue, the paragraph contains sufficient specificity and the Motion to Strike paragraph 21 should be denied.

Paragraph 24 of the Objectors' Petition provides as follows:

24. Circulator Derrick Jones lists his residence address at 1220 S. Homan, but upon information and belief, he is a resident and registered voter at 733 N. Homan, thus invalidating the Circulator's Affidavit as being false and invalidating each and every sheet circulated by Derrick Jones.

Candidates request that paragraph 24 be stricken because it is irrelevant where the circulator was once registered to vote. Objectors contend that the paragraph involves a fact question and not subject to a Motion to Strike and Dismiss. Although Candidates are correct that it is irrelevant where the circulator was once registered to vote, it is relevant at what address he resides. Therefore, paragraph 24 is sufficiently pled and presents a fact question and Candidates' Motion to Strike paragraph 24 should be denied.

Paragraph 25 of the Objectors' Petition provides as follows:

25. Sheets 581, 585 and 586 purported to be circulated by Mae McLeninen are forgeries of purported signers whose names have been forged not once-not twice-but three times. The Circulator has sworn under oath that she has seen the signers sign their names and the names are genuine. She has not told the truth under oath and has vitiated her affidavit. All petition sheets signed by this Circulator because of the patter of fraud should be stricken. These sheets are 567, 568, 569, 570, 581, 582, 585, 586, 587, 595, and 596.

Candidates request that paragraph 25 be dismissed as it is vague and fails to set forth facts to prove a pattern of fraud. Objectors contend that Paragraph 25 presents a fact question and is specifically pled. Objectors are correct. The paragraph is clearly and precisely pled and Candidates' Motion to Strike paragraph 25 should be denied.

Paragraph 26 of the Objectors' Petition provides as follows:

26. Sheets 580, 589 and 597 are purportedly circulated by a Timothy Lee. These three sheets are total forgeries signed by the same person or persons and are classic "round tabled" and forged signatures. The Circulator has sworn under oath that he has seen the signers sign their names and the names are genuine. He has not told the truth under oath and has vitiated his affidavit. All petition sheets signed by this Circulator because of the pattern of fraud should be stricken. These sheets are 91, 105, 157, 158, 172, 174, 184, 185, 206, 275, 450, 497, 499, 501, 576, 580, 589 and 597.

Candidates request that paragraph 26 be stricken in that it is vague and does not plead facts that would prove a pattern of fraud. Objectors contend that Paragraph 26 presents a fact question and is specifically pled. Objectors are correct. The paragraph is clearly and precisely pled and Candidates' Motion to Strike Paragraph 26 should be denied.

Paragraph 27 of the Objectors' Petition provides as follows:

27. That Circulator Cynthia Guerrero used two different addresses as her residence address when Illinois law requires the circulator to state the address where they live. All of Circulator Guerrero's petition sheets are invalid for failure to state her true residence address or those sheets that do not state her true residence address are invalid. Her petition sheets are 4, 7, 26, 37, 65, 90, 97, 100, 166, 218, 292, 293 and 295.

Candidates request that paragraph 27 be stricken in that it is not unreasonable for a person to have two residence addresses over a short period of time. Objectors argue that

the paragraph is a fact allegation that will be proven at the hearing. While candidates' argument that it is possible for a person to have two addresses in a short period of time may be true, said fact constitutes a defense and properly presented in an evidentiary hearing. The paragraph is sufficiently clear to put the candidate on notice as to the issue presented and the paragraph states a basis to invalidate the circulators' sheets, if proven to be true. Accordingly, the Motion to Strike paragraph 27 should be denied.

Paragraph 28 of the Objectors' Petition provides as follows:

28. That Circulator Bobby Hamilton signed as registered voter at one address (3333 N. Madison) and as a circulator at a different address (3337 W. Madison). If he is a registered voter at 3333 W. Madison, then he does not live at 3337 W. Madison, and has signed his Circulator's statement falsely under oath, vitiating the sworn statement on each and every sheet signed by him as Circulator (sheets 74, 77, 80, 83, 84, 212, 266, 289).

Candidates request that paragraph 28 be stricken because it is irrelevant where the circulator was once registered to vote. Objectors argue that paragraph 28 is a fact allegation that will be proven at the hearing. Objectors have clearly set forth a basis, that if true, would be a cognizable basis to strike the circulators' sheets. Candidates' argument, if true, might be a good defense but it is not a basis to strike the paragraph. Therefore, Candidates' Motion to Strike paragraph 28 of the Objectors' petition should be denied.

Paragraph 29 of the Objectors' Petition provides as follows:

29. That purported Circulator Angela Balls does not exist nor reside at the address listed on her Circulator's affidavit invalidating sheets 88, 297, 299 and 394.

Candidates request that paragraph 29 be stricken because it does not provide any evidence or facts to show that the Circulator does not live at the address and that the allegation that the circulator does not exist is too vague. Objectors argue that the paragraph presents a fact allegation to be proven at a hearing. Admittedly, while the paragraph is written somewhat imprecisely, it is sufficient to put the candidate on notice

that a person named Angela Ball, the purported circulator, does not exist and said person could therefore not reside at the address listed on her sheets. Accordingly, the Motion to Strike paragraph 29 should be denied.

Paragraph 30 of the Objectors' Petition provides as follows:

30. That Circulator Jerry Norvell signed as the purported Circulator on sheets 272 and 286 which were notarized by two different notaries, however sheets 272 and 286 are duplicates or were signed by someone other than the purported signer and are forgeries. The Circulator has sworn under oath that he has seen the signers sign their names and the names are genuine. He has not told the truth under oath and has vitiated his affidavit. All petition sheets signed by this Circulator because of the pattern of fraud should be stricken. These sheets are 24, 70, 99, 117, 127, 136, 139, 141, 148, 169, 170, 190, 245, 247, 254, 263, 269, 272, 284, 286, 408, 457, 466, 489, 504, 529, 543 and 594.

The Candidates request that paragraph 30 be stricken as it is legally insufficient and vague. Objectors contend that paragraph 30 is pled with specific facts and that it presents a fact question and is not subject to a Motion to Strike. While the Objectors are correct in that facts have been pled, the facts are confusing and the paragraph is unclear. As a result, it fails to put the Candidates on notice as to what allegation they must defend. Therefore, paragraph 30 should be stricken.

Paragraph 31 of the Objectors' Petition provides as follows:

31. That every signature on every sheet is not in compliance with the Election Code since the address of each and every signer does not contain the State of residence. Additionally, all signatures that do not contain a designation of county and/or village or city are not in conformity with the Illinois election Code and should be stricken, and are hereby objected to.

Candidates request that paragraph 31 be stricken because it is clear from the preamble that the signers are "qualified primary electors...in the State of Illinois. Additionally, where the voter has not indicated Cook and as the county and they live in Chicago it is clear that the applicable county is Cook. Objectors argue that paragraph 31 merely states the law which mandates that each signer's residence address, including the city, county and state be included on the petition. This matter was addressed at the hearing. At the hearing the focus was the lack of specificity of the allegations in that no sheets and lines were specified. As to the issue of the

failure to include the county or city, the Motion to Strike and Dismiss should be (and in fact was) granted. As to the issue of the lack of specificity in the allegation regarding the failure to include the State, the motion to strike was denied in that it is clear the failure to include the state applied to each signature and was sufficiently pled. However, the failure to include the State in the residence addresses of the signers is an insufficient basis to invalidate the signatures, and, therefore, the motion to strike and dismiss should be granted as to the entire paragraph 31.

EVIDENTIARY HEARING

Objectors presented evidence in support of paragraphs 20, 22 and 23. In these paragraphs, the Objectors allege that Lieutenant Governor Candidate Brunell Donald (“Donald”) filed a false statement of candidate because she either did not reside at the address on her Statement of Candidacy or that she was not a qualified voter at said address.

Did Candidate Donald reside at the address on her Statement of Candidacy

Donald testified that she resided at 5200 S. Blackstone ,Chicago, IL. (“Blackstone”) prior to July, 2012. In July, 2012, she moved to 913 E. 54th St., Chicago, IL. (“54th St.”) with her husband and children. It is the 54th St. address that Candidate Donald placed on her Statement of Candidacy. To corroborate Donald’s testimony, a Com Ed bill dated November 6, 2013 (Candidate’s Exhibit 1), a Fifth Third Bank Notice of Overdraft dated October 31, 2013 (Candidate’s Exhibit 2) and a letter from MAC property Management indicating that on November 21, 2013 (the date the Candidate signed her statement of Candidacy) the Candidate lived at 913 E. 54th St. and that prior to that time she lived at 5200 S. Blackstone, Apt. 1007, Chicago, IL. (Candidates’ Exhibit 3) were received into evidence. Objectors presented the registration records of other individuals who resided at 913 W. 54th St (Exhibits A8 through A12). However, these records indicate that the voters therein reside at different apartments at the same address and said records were therefore not persuasive in proving that the Candidate did not reside at the address indicated on her Statement of Candidacy. The uncontroverted testimony

Was Candidate Donald a qualified voter at the address on her Statement of Candidacy

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County of)

I,, being first duly sworn, say that I reside at Street in the city (or village) of, in the county of, State of Illinois; **that I am a qualified voter therein and am a qualified primary voter of the party**; that I am a candidate for nomination (for election in the case of committeeman and delegates and alternate delegates) to the office of to be voted upon at the primary election to be held on (insert date); that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office I seek the nomination for) to hold such office and that I have filed (or I will file before the close of the petition filing period) a statement of economic interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official primary ballot for nomination for (or election to in the case of committeemen and delegates and alternate delegates) such office.

Signed

Subscribed and sworn to (or affirmed) before me by, who is to me personally known, on (insert date).

Signed

(Official Character)

(Seal, if officer has one.)

While the suggested form of the Statement of Candidacy contains the language is “**a qualified voter therein**”, the actual requirement set forth in the statute is that the Candidate swear that he or she is a **qualified primary voter** of the party. The language of the Statement of Candidacy form can be viewed as directory or suggestive to the extent it exceeds what is actually required by the statute. See, e.g. *O'Connor v Cook County Officers Electoral Board*, 281 Ill. App. 3 1108, 667 N.E.2d 672 (1st Dist.1996). As the court in *Cullerton v DuPage County Officers Electoral Board*, 384 Ill. App. 3d 989, 894 N.E. 774 (2nd Dist. 2008) instructs, the relevant inquiry is whether the candidate was a qualified primary voter of the party at the time she signed the nominating papers. The *Cullerton* court found that the plain and ordinary meaning of the requirement that a candidate be a qualified primary voter of the party which he seeks a nomination mandates, if nothing else, that the candidate have been eligible to vote in the primary for that party in the most recent primary election preceding the candidate's filing the statement of candidacy. Therefore, it is clear from the *Cullerton* case that the term “qualified voter” and

“qualified primary voter” are not synonymous as used in Section 7-10. It is also clear that there is simply no requirement that the Candidate be a registered or qualified voter at the address specified in the Statement of Candidacy. See *Henderson v Miller*, 228 Ill. App. 3d 260, 592 N.E.2d 570 (1st Dist.) To the extent the Objectors urge to the contrary, they are mistaken.

Was Candidate Donald a qualified primary voter as said term has been defined at the time she filed signed her Statement of Candidacy

Therefore, the next relevant inquiry is whether the Candidate was a qualified primary voter of the Democratic Party at the time she signed her nominating papers. Or, stated another way, was the Candidate eligible to vote for the Democratic party in the most recent primary election preceding the signing of the Statement of Candidacy. The following is what is known about the Candidate’s registration status. The evidence established that on November 6, 2012 (exhibit A-6), Candidate signed an affidavit for a provisional ballot in which she testified that she resided at 5200 S. Blackstone. However, at the time she signed said affidavit, Donald, by her own admission, was not a resident at said address. She was a resident at the 54th Street address. In fact, she had not been a resident at that address since July, 2012. On January 18, 2013, the Candidate’s registration was changed from inactive status at 3145 Flournoy, Chicago, IL. to active status at 5200 S. Blackstone, Chicago, IL. (Objectors’ group Exhibit A-4). It is unclear how this change was initiated as no evidence was presented that the Candidate herself requested the change. On November 27, 2013, Candidate Donald changed her registration from the Blackstone address to 913 E. 54th St., Chicago, IL. the address on her Statement of Candidacy. (Objectors’ Group exhibit 3).

The unequivocal evidence establishes that Candidate Donald did not reside at the Blackstone address at the time she voted from said address (November, 2012) or at the time she became a registered voter from said address (January 18, 2013). While little evidence was presented as to the length of Candidate’s residency at 5200 S. Blackstone, Candidate’s Exhibit 3

implies that it had been since July 1, 2010. Exhibit 3, a letter Mac Property Management, reads as follows:

Re: Residency of Brunell Donald
Illinois State Board of Elections
100 W. Randolph
Room 14-100
Chicago, Illinois

Dear Illinois State Board of Elections:

This letter confirms that Brunell Donald resided at 913 E. 54 Street on November 21, 2013. Prior to Brunell Donald living at 913 E. 54th Street she lived at another property owned by Mac Property 5200 S. Blackstone, Apt. 1007, Chicago, Illinois 60615. Brunell Donald has been a tenant with Mac Property since July 1, 2010.

Sincerely,
Dan Springer
Resident Services Manager
Mac Property management 1352 E. 53rd Street
Chicago, IL. 60615
(773) 548-5077 ext. 3517
dspringer@macapartments.com

The evidence further establishes that the Candidate, whether knowingly or not, registered from the Blackstone address in 2013, well after she was legally entitled to do so. Therefore, from 2010 to November 27, 2013, Candidate did not have a valid registration and therefore could not have been qualified to vote in the Democratic Primary at the last primary election.

Accordingly, Candidate Donald filed a false statement when she swore that she was a qualified primary voter of the Democratic primary. In fact, she was not and could not have been a qualified voter in the Democratic Primary at the last primary election.

Candidates argue that the case of *Laiacona v Mell*, 10- EB-RGA-25, CBEC 2010, is applicable here because the status of the Candidate Donald's registration is identical to the candidate in *Mell*. In the *Mell* case, the Candidate was running for the office of Representative in the General Assembly for the 40th district. There as here, an objection was filed alleging that the Candidate's Statement of Candidacy was false and perjurious because at the time of the

signing, the Candidate was not a qualified voter at the address set forth on her Statement of Candidacy. In *Mell*, the Candidate was registered to vote at a prior address and she was not entitled to vote from said address because she had moved more than 30 days prior to the election. Both addresses were in the 40th Representative District and the Board determined that there was no express requirement in section 8-8 of the Election Code that specifically required a candidate to be a registered or qualified voter at the address set forth on the Statement of Candidacy.

However, the facts in *Mell* are distinguishable because the evidence established that the Candidate was a qualified primary voter at her last address at the last primary election even if her registration was on inactive status and therefore entitled to vote in the last primary election from said address. Here, no such conclusion can be drawn. At the time Candidate Burell signed her Statement of Candidacy, she was not validly registered anywhere in the state and therefore could not have been a qualified primary voter as she so avered in her Statement of Candidacy. It is well established that where a Statement of Candidacy is false, it renders the candidacy invalid. Therefore, it is clear that Donald, having filed a false Statement of Candidacy, is now disqualified from running for the office Lieutenant Governor.

The Constitutionality of Section 7-10

Candidates argue that the eligibility requirements for the office of Lieutenant Governor are set forth in Article V, Section 3 of the Illinois Constitution and nowhere in that Section is the requirement that the Candidate must be a registered or qualified voter. Article V, Section 3 of the Illinois Constitution provides as follows:

To be eligible to hold the office of Governor, Lieutenant Governor, Attorney General, Secretary of State, Comptroller or Treasurer, a person must be a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.

Candidates contend that the Constitution does not give the General Assembly the power to change the eligibility requirements for Lieutenant Governor. According to the Candidates, the sole power delegated to the legislature with respect to the election of Governor and Lieutenant

Governor is the power to provide for their joint nomination. See Article V, Section 4 of the Illinois Constitution.

Candidates argue that to the extent Section 7-10 imposes the requirement that the Candidate be a registered voter, said requirement is unconstitutional because it expands the eligibility requirements set forth in the Constitution. While the argument is persuasive, the constitutionality of the requirement that the Candidate be a qualified primary voter of the Democratic Party as required in Section 7-10 is beyond the scope of authority of the Electoral Board and, therefore, beyond the scope of authority of this Hearing Officer.

The Effect of the Invalidity of Candidate Donald's Statement of Candidacy

Objectors urge that the nominating papers be deemed invalid not only as to Candidate Donald but as to Candidate Hardiman as well. In support of their argument Objectors cite the requirement contained in Section 7-10 that provides **"In the case of the offices of Governor and Lieutenant Governor, a joint petition including one candidate for each of those offices must be filed."** 10 ILCS 5/7-10. However, nowhere in the Election Code and particularly in Section 7-10 which provides for the filing of a joint petition does the legislature call for the joint disqualification of both candidates where one candidate is disqualified from running. Had the legislature intended such a consequence, the legislature could have explicitly provided for it. Inasmuch as the legislature has failed to provide any such consequence, the Electoral Board, and, therefore, this hearing Officer, is without authority to invalidate the nominating papers of Tio Hardiman.

THE RULE 9 MOTIONS

The Objectors' Rule 9 motion did not contain specific sheets and lines or evidence to reverse the rulings made at the records examination. Rather, the Motion alleged generally that the rulings made by the Board's employees were not consistent as to column B objections where the allegation was that the genuineness of the signature was contested and the signature was printed. According to the Objectors, during the records examination some of the Board's

employees compared the petition signature to the one contained on the card and some employees did not compare the signatures. Objectors further allege that the employees were influenced by confusion, unrest and purported harassment by one of the Candidates' watchers. The Motion requested that the records examination be undertaken a second time as to the rulings in Column B where the signature was printed. Whether or not the Objectors were correct in their observations, they provided no specificity to proceed with a Rule 9 Motion. It was up to the Objectors to specify, at a minimum, the location by sheet and line of the signatures that were reviewed in the inconsistent manner as alleged and to provide some evidence that same was true such as an affidavit or the testimony of a live witness. None of these steps were taken, and, as a result there was nothing to review in the Objectors' Rule 9 motion. Accordingly, the Objectors' Rule 9 Motion was dismissed.

The Candidates also filed a Rule 9 Motion. However, at the end of the hearing, the Objectors failed to present evidence to invalidate additional signatures and it was unnecessary for the Candidates to proceed on their Rule 9 Motion.

RECOMMENDATION

As previously indicated, Candidate Brunell Donald is disqualified from seeking the office of Lieutenant Governor in light of the fact that she filed a false Statement of Candidacy. However, there is no authority in the Election Code to strike the nominating papers as they relate to Candidate Tio Hardiman. Accordingly and in light of the foregoing, it is my recommendation that the objections of Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang to the nominating papers of Brunell Donald be sustained and that the nominating papers of Brunell Donald for the Democratic nomination to the office of Lieutenant Governor be deemed **invalid** and that the name of Brunell Donald for said office **not be** printed on the ballot at the March 18, 2014 General Primary Election. It is my further recommendation that the objections Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang to the nominating papers of Tio Hardiman

be **overruled** and that the nominating papers of Tio Hardiman for the Democratic nomination to the office of Governor be deemed **valid** and that the name of Tio Hardiman for said office be printed on the ballot at the March 18, 2014 General Primary Election.

Respectfully submitted,

Barbara Goodman /s/

Barbara Goodman
Hearing Officer
1/12/14

C

Appellate Court of Illinois,
First District, Sixth Division.

Patricia HENDERSON and Diane Logan,
Plaintiffs–Appellants,

v.

Jesse L. MILLER, Jr., Defendant–Appellee.

No. 1–91–1379.

April 10, 1992.

Voter and residents of ward petitioned for leave to file complaint in quo warranto to seek removal of alderman. The Circuit Court, Cook County, Curtis Heaston, J., found that residents lacked standing to bring action, that action was time barred, and that circuit court lacked original jurisdiction. Appeal was taken. The Appellate Court, Egan, P.J., held that: (1) alderman was not required to swear in candidacy form that he was a qualified voter at his listed residence, and (2) citizens' interest in alderman's removal was not sufficiently different from that of general public to give citizens standing.

Affirmed.

West Headnotes

[1] Pleading 302 ⚡312

302 Pleading

302X Exhibits

302k312 k. Variance between pleading and instrument annexed, filed, or referred to. Most Cited Cases

If facts alleged in complaint differ from those shown by exhibit attached to complaint, exhibit controls.

[2] Municipal Corporations 268 ⚡138

268 Municipal Corporations

268V Officers, Agents, and Employees

268V(A) Municipal Officers in General

268k137 Eligibility

268k138 k. In general. Most Cited

Cases

Because municipal code required only that candidate for alderman reside within ward for which he was elected and be a qualified elector of municipality, act did not require that candidate be voter at place of his residence, so that statement of candidacy which contained sentence listing residence and later sentence stating “I am a qualified voter therein” was not equivalent of swearing that candidate was voter at place of residence. S.H.A. ch. 24, ¶¶ 3–4–15, 3–14–1.

[3] Election Law 142T ⚡211

142T Election Law

142TV Contributions and Expenditures;
Campaign Finance

142Tk204 Administrative Agencies and
Proceedings

142Tk211 k. Penalties and fines. Most
Cited Cases

(Formerly 144k317.5 Elections)

Even if alderman were in violation of Campaign Disclosure Act, board of election commissioners did not have the authority to order removal of alderman from office; board had authority to impose civil penalty in amount not to exceed \$1,000. S.H.A. ch. 24, ¶ 4–8–2; ch. 34, ¶ 5–36009; ch. 38, ¶ 33–3; ch. 46, ¶¶ 9–24, 9–26, 10–5; ch. 127, ¶ 604A–107.

[4] Quo Warranto 319 ⚡31

319 Quo Warranto

319II Procedure

319k30 Parties Plaintiff or Petitioners

319k31 k. In general. Most Cited Cases

Right to institute action in quo warranto belongs to state, and, thus, only state's attorney or attorney general could bring action to attempt to

remove alderman from office. S.H.A. ch. 110, ¶ 18-101(3).

[5] Quo Warranto 319 ⚔24

319 Quo Warranto

319I Nature and Grounds

319k24 k. Persons entitled to relief. Most Cited Cases

In cases involving matters of public interest, only attorney general or state's attorney, as representatives of people, have standing to institute quo warranto proceedings; in matters of purely public interest, officials have complete, arbitrary, and unfettered discretion as to whether to institute action.

[6] Quo Warranto 319 ⚔24

319 Quo Warranto

319I Nature and Grounds

319k24 k. Persons entitled to relief. Most Cited Cases

Under Illinois law, private citizen seeking to bring action in quo warranto on his own behalf must first request that attorney general or state's attorney file action, and, if officers refuse or fail to act, individual may petition court for leave to file action and must show private interest which is directly, substantially, and adversely affected by challenged act which is either then occurring or certain to occur and which is distinct from interest of general public. S.H.A. ch. 110, ¶ 18-103.

[7] Quo Warranto 319 ⚔24

319 Quo Warranto

319I Nature and Grounds

319k24 k. Persons entitled to relief. Most Cited Cases

Residents and voters of ward in which alderman had been elected did not have interest sufficiently personal and distinct from interest of general public to give them standing to challenge alderman under quo warranto action.

*261 ***134 **570 Holstein, Mack & Klein,

Chicago (Anthony B. Bass and Thayer C. Torgerson, of counsel), for plaintiffs-appellants.

Ahern, Butler & Glover, Chicago (Maurice R. Glover and Cecil C. Butler, of counsel), for defendant-appellee.

****571 ***135** Presiding Justice EGAN delivered the opinion of the court:

The defendant, Jesse L. Miller, Jr., is presently the alderman of the 24th Ward in the City of Chicago. The plaintiffs, Patricia Henderson and Diane Logan, appeal from an order denying their petition for leave to file a complaint in *quo warranto* in which they sought the removal of the defendant from the office of alderman. The trial judge held that the plaintiffs lacked standing to bring the action, that the action was time-barred and that the circuit court lacked original jurisdiction. The defendant contends that the trial judge correctly denied leave to file the complaint on the grounds he ascribed; the defendant also maintains that the judge's order should be affirmed on the additional ground that the complaint failed to state a cause of action.

On December 10, 1990, the defendant filed his sworn Statement of Candidacy with the Board of Election Commissioners for the City of Chicago, requesting that his name be placed on the election ballot for Alderman of the 24th Ward. The Statement of Candidacy included the following sworn statement of the defendant:

"I, JESSE L. MILLER, JR., being first duly sworn, say that I reside at 1109 SOUTH AVE. [sic] Street, in the CITY of CHICAGO Zip Code 60612 in the county of COOK State of Illinois; that I am a qualified voter therein, that I am a candidate for ELECTION to the office of ALDERMAN in the 24TH WARD CITY OF CHICAGO to be voted upon at the ELECTION to be held on the 26TH day of FEBRUARY, A.D.1991 and that I am legally qualified to hold such office and that I have filed (or I will file

before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby *262 request that my name be printed upon the official ballot for ELECTION for such office."

The statement was signed by the defendant and notarized. At the top of the statement is a box for an address; in the box is "1109 South Troy Avenue, Chicago, IL 60612." The plaintiffs make no issue of the discrepancy in the address that is contained in the body of the sworn portion of the Statement of Candidacy.

The preliminary election for alderman of the 24th Ward was held on February 26, 1991. The defendant did not receive a majority of the votes cast; therefore, his name was placed on the Supplementary Aldermanic Ballot for the election to be held on April 2, 1991. On March 26, 1991, the plaintiffs, residents of the 24th Ward, filed a *quo warranto* complaint in the Circuit Court of Cook County seeking to have the defendant's candidacy declared unlawful. The complaint alleged that the defendant fraudulently represented on his Statement of Candidacy that he was a registered voter at 1109 South Troy Avenue in Chicago, when he was in fact a registered voter at 1647 South Springfield in Chicago; that he did not become a registered voter at 1109 South Troy until February 28, 1991; and that the defendant had violated the Campaign Disclosure Act (Ill.Rev.Stat.1989, ch. 46, par. 9-1 *et seq.*) by failing to account for his campaign contributions and expenditures.

In accordance with section 18-103 of the Code of Civil Procedure (Ill.Rev.Stat.1989, ch. 110, par. 18-103), before filing the complaint, the plaintiffs had requested the State's Attorney of Cook County and the Illinois Attorney General to investigate and prosecute the defendant's alleged fraud and violations of the Campaign Disclosure Act. Neither office answered the plaintiffs' request.

Some time before the *quo warranto* complaint was filed in the Chancery Division of the circuit

court, the plaintiffs had filed a complaint against the defendant with the State Board of Elections alleging that the defendant had not filed forms required by the Campaign Disclosure Act and had failed to report contributions and expenditures for his campaigns for alderman and the Water Reclamation District.

On February 25, 1991, the State Board of Elections entered a "Final Determination and Order" in which the Board found that the defendant had violated the act by failing**572 ***136 to file the required forms and by failing to report contributions and expenditures. The Board ordered the defendant to create a committee to file the appropriate forms within ten days of receipt of the order. The order further provided that any failure or refusal by the committee*263 to comply with the terms of the order would result in the automatic imposition upon the committee and its officers a civil penalty not to exceed one thousand dollars. A copy of the order was attached to the *quo warranto* complaint.

On April 2, 1991, the defendant defeated his opponent in the run-off election and was elected alderman of the 24th Ward. The Chancery Division judge granted the plaintiffs leave to file an "Emergency Motion for Temporary Restraining Order and Declaratory Judgment" on April 5, 1991, requesting that the defendant be enjoined from taking the oath of office. The plaintiffs' motion alleged that the defendant "knowingly circulated petitions stating he was registered to vote at 1109 South Troy Avenue, Chicago, when, in fact, he was not a registered voter therein." Attached to the plaintiffs' motion was their "First Amended Complaint In *Quo Warranto*, Declaratory Judgment and Injunctive Relief." The matter was transferred from the Chancery Division to the County Division on April 5, 1991.

On April 18, 1991, the County Division judge entered an order enjoining the defendant from taking the oath of office for alderman of the 24th Ward and from performing any of the duties of the

office of alderman.

On April 23, 1991, the defendant filed a motion requesting that the judge dissolve the temporary restraining order, dismiss the complaint in *quo warranto* and dismiss the petition for declaratory judgment and injunctive relief. After a hearing, the judge dissolved the temporary restraining order and continued the motion to dismiss.

On May 1, 1991, the judge dismissed the complaint for declaratory judgment on the ground that the plaintiffs lacked standing. Relying on *Thurston v. State Board of Elections* (1979), 76 Ill.2d 385, 30 Ill.Dec. 304, 392 N.E.2d 1349, he held that the plaintiffs' claim was barred by *laches*. Relying on *People ex rel. Klingelmueller v. Hass* (1982), 111 Ill.App.3d 88, 66 Ill.Dec. 856, 443 N.E.2d 782, he held that the circuit court had power only to review the decision of an electoral board but had no original jurisdiction to determine the validity of the defendant's nominating papers. His order dismissed both the plaintiffs' complaint for declaratory judgment and their petition for leave to file a complaint in *quo warranto*.

We note that the notice of appeal refers only to the order denying the plaintiffs' leave to file a complaint in *quo warranto*; it makes no reference to the dismissal of the complaint for declaratory judgment. The plaintiffs' attorney informed us in oral argument*264 that we need not address the propriety of the order dismissing the declaratory judgment complaint.

The *quo warranto* complaint alleged two acts of wrongdoing on the part of the defendant: (1) he "fraudulently misrepresented that he was a registered voter at 1109 South Troy Avenue," (2) he "is currently in violation of the Campaign Disclosure Act * * * in that he has failed to account for contributions and expenditures for the campaign for Alderman for the 24th Ward." The issues of *laches* and jurisdiction apply only to the allegation of fraudulent misrepresentation in the nominating papers. Because resolution of those issues would

not resolve the entire case, we need not discuss them. The issues of standing and sufficiency of the complaint apply to both allegations of wrongdoing. Because we conclude that the judgment should be affirmed for both lack of standing and the insufficiency of the complaint, we address only those issues.

[1][2] Stated briefly, the allegation of the complaint that the defendant "fraudulently misrepresented that he was a registered voter at 1109 South Troy Avenue" is mistaken. In the statement of candidacy the defendant said, "I reside at 1109 South [Troy Avenue] in the City of Chicago Zip Code 60612 in the county of Cook State of Illinois" and "I am a qualified voter therein." (Emphasis added.) Our reading of **573 ***137 the exhibit shows that the defendant did not swear that he was voter at 1109 South Troy; he swore only that he resided there. When facts alleged in a complaint differ from those shown by an exhibit attached to the complaint, the exhibit controls. (*Friedman v. Gingiss* (1989), 182 Ill.App.3d 293, 130 Ill.Dec. 738, 537 N.E.2d 1067.) The plaintiffs now ask us to infer that when the defendant swore he was a "voter therein," he was swearing that he was a voter at 1109 South Troy and not in the City of Chicago. We must decline to do so.

The Municipal Code requires only that a candidate for alderman "reside within the ward for which he is elected" and be "a qualified elector of the *municipality*." (Emphasis added.) (Ill.Rev.Stat.1989, ch. 24, pars. 3-4-15, 3-14-1.) The act does not require that a candidate be a voter at his place of residence. The defendant's Statement of Candidacy is on a form provided by the Board of Election Commissioners of the City of Chicago. If the plaintiffs' argument is correct, the form provided by the Board requires a candidate to swear to something which the statute itself does not require. The illogic of the plaintiffs' argument is apparent. We agree with the defendant's contention that his Statement of Candidacy did not

fraudulently misrepresent that he was a “voter at 1109 South *265 Troy.” Consequently, removing the defendant from office based on that allegation would not be justified.

The plaintiffs correctly point out that the judge did not address the allegation that the defendant had violated the Campaign Disclosure Act. We can understand the judge's abstention from deciding that question, since he held that the plaintiff lacked standing to maintain any *quo warranto* complaint. The plaintiffs also correctly point out that the defendant has not answered their argument that violation of the Campaign Disclosure Act would justify the defendant's removal from office. Although the defendant has not answered the argument, we will address it. See *Korogluyan v. Chicago Title & Trust Co.* (1991), 213 Ill.App.3d 622, 157 Ill.Dec. 690, 572 N.E.2d 1154.

[3] The *Quo Warranto* Act provides that “[a] proceeding in *quo warranto* may be brought in case: * * * (3) any public officer has done, or allowed any act *which by the provisions of law, works a forfeiture of his or her office [.]*” (Emphasis added.) (Ill.Rev.Stat.1989, ch. 110, par. 18–101(3).) The Campaign Disclosure Act provides that, where the Board directs a person in violation of its provisions to cease or correct the violation and such person fails or refuses to comply with the order, the Board may impose a civil penalty on such person in an amount not to exceed \$1,000. The Board may petition the circuit court for an order to enforce collection of the penalty and the Board may report the violation and any failure to comply with the order to the Attorney General or the appropriate State's Attorney. (Ill.Rev.Stat.1989, ch. 46, par. 9–23.) The Board may also petition the circuit court for an order compelling compliance with an order or enjoining a person from violating the act. (Ill.Rev.Stat.1989, ch. 46, par. 9–24.) Willful failure to file or willful filing of false or incomplete information shall constitute a class B misdemeanor and prosecution shall be brought by the appropriate State's Attorney or the Attorney General. (

Ill.Rev.Stat.1989, ch. 46, par. 9–26.) There is no provision in the act for removal from office for any violation of its requirements. In contradistinction, the Election Code expressly provides that a statement of economic interests shall be filed within a prescribed time (Ill.Rev.Stat.1989, ch. 46, par. 10–5), and the Illinois Governmental Ethics Act provides that failure to file a statement of economic interests within the time prescribed shall result in ineligibility for, or forfeiture of, office. Ill.Rev.Stat.1989, ch. 127, par. 604A–107; see also *Welch v. Johnson* (Ill. S.Ct. 1992), 147 Ill.2d 40, 167 Ill.Dec. 989, 588 N.E.2d 1119.

*266 There are a number of other statutes which expressly provide that a violation of their provisions results in forfeiture of office. (See *e.g.*, Ill.Rev.Stat.1989, ch. 38, par. 33–3 (official misconduct); Ill.Rev.Stat.1989, ch. 24, par. 4–8–2 (bribery by a nominee or candidate); Ill.Rev.Stat.1989, ch. 34, par. 5–36009 (conflict of interest of county **574 ***138 officers and employees).) It is apparent that, when the legislature intends that an office shall be forfeited for violation of a statute, the legislature will say so.

Before a statute may be construed to include a penalty, including forfeiture of office, it must be clear that the legislature intended to include it. It is a fundamental rule of statutory construction that any ambiguity in a statute must be resolved against the inclusion of a penalty. (*Saskill v. 4–B Acceptance* (1985), 139 Ill.App.3d 143, 93 Ill.Dec. 653, 487 N.E.2d 97.) Invoking that rule of construction, we conclude that the legislature did not intend that a violation of the Campaign Disclosure Act constituted a ground for removal from office. Therefore, the conduct of the defendant did not come within the provisions of the *Quo Warranto* Act. Ill.Rev.Stat.1989, ch. 110, par. 18–101(3).

For these reasons, we conclude that the two allegations of wrongdoing are not sufficient to support the complaint and that the trial judge properly denied leave to file the complaint in *quo*

warranto.

[4] We also conclude that the trial judge correctly denied leave to file the *quo warranto* complaint on the ground that the plaintiffs lacked standing. The right to institute an action in *quo warranto* belongs to the State; thus, originally only the State's Attorney or the Attorney General could bring the action. Over time, the law evolved to allow a private person having a distinct private interest in the subject matter to apply to the Attorney General or the State's Attorney to institute the proceeding on his behalf. If the petition met certain requirements, the authorities were required to institute the action, and if they refused to do so, a court could compel them by *mandamus* to file the action. See *People ex rel. Miller v. Fullenwider* (1928), 329 Ill. 65, 160 N.E. 175.

[5] In cases involving matters of public interest, however, Illinois courts have consistently held that only the Attorney General or the State's Attorney, as representatives of the people, have standing to institute *quo warranto* proceedings. (See *People ex rel. Raster v. Healy* (1907), 230 Ill. 280, 82 N.E. 599.) Moreover, in matters of purely public interest, these officials have complete, arbitrary and *267 unfettered discretion as to whether they shall institute the action. *People v. Wood* (1952), 411 Ill. 514, 104 N.E.2d 800.

[6] Under current Illinois law, a private citizen seeking to bring an action in *quo warranto* on his own behalf must first request the Attorney General or the State's Attorney to file the action. (Ill.Rev.Stat.1989, ch. 110, par. 18-103.) If those officers refuse or fail to act, the individual may petition the court for leave to file the action. In order to obtain leave, an individual must demonstrate that he has standing by showing that he has a private interest which is directly, substantially and adversely affected by the challenged act, which is either then occurring or certain to occur, and which is distinct from the interests of the general public, even though some members of the public might be affected in the

same manner. (*People ex rel. Turner v. Lewis* (1982), 104 Ill.App.3d 75, 59 Ill.Dec. 879, 432 N.E.2d 665.) Filing a complaint in *quo warranto* is not a matter of right, and whether leave to institute the action should be granted lies within the sound discretion of the trial court. (*People ex rel. Nelson v. Long Grove* (1988), 169 Ill.App.3d 866, 119 Ill.Dec. 900, 523 N.E.2d 656.) The court should consider all the circumstances of the case, including whether the proceeding will benefit the public. See, e.g., *People ex rel. Hanrahan v. Village of Wheeling* (1976), 42 Ill.App.3d 825, 1 Ill.Dec. 524, 356 N.E.2d 806.

In *People ex rel. Turner v. Lewis*, (1982), 104 Ill.App.3d 75, 59 Ill.Dec. 879, 432 N.E.2d 665, a case relied upon by the trial judge, the plaintiff was denied leave to file an action in *quo warranto* against the appointed State's Attorney. The plaintiff argued that he had standing because he was a taxpayer in the county, relying on *People ex rel. McCarthy v. Firek* (1955), 5 Ill.2d 317, 125 N.E.2d 637. The appellate court distinguished *Firek*, noting that in that case standing was premised on direct adverse tax consequences certain to be suffered by the plaintiffs. The *Turner* plaintiff**575 ***139 alternatively argued that he had standing as a citizen and voter in the county. The appellate court dismissed this argument, holding that the defendant's occupation of the office of State's Attorney had not harmed the plaintiff as a citizen or voter in any respect which was distinct from the harm suffered by every other citizen and voter in the county.

In *Allen v. Love* (1983), 112 Ill.App.3d 338, 68 Ill.Dec. 66, 445 N.E.2d 514, another case relied upon by the trial judge, the plaintiffs argued that they had standing to bring a *quo warranto* and declaratory judgment action against the chief financial officer of the Chicago Board of Education because they were residents and taxpayers in the city, and because they had children enrolled in the Chicago public*268 school system. The appellate court held that taxpayer status alone was

insufficient to give the plaintiffs standing, as they had not alleged that the defendant's failure to timely file a statement of economic interests would result in financial loss or other injury to them. Similarly, the court held that the interest of the parents of Chicago public school students in assuring compliance with the Ethics Act was not a personal interest sufficient to confer standing to maintain a *quo warranto* action. Accordingly, the court held that only the Attorney General or the State's Attorney would have standing to bring a *quo warranto* action against the defendant.

[7] The plaintiffs allege that as residents and voters of the 24th Ward, their interests are distinct from those of persons residing outside the 24th Ward. However, in *Turner*, the plaintiff's interest was distinct from that of persons residing outside his county, and in *Allen*, the interest of the parents of Chicago public school students was distinct from that of other persons. Nonetheless, their interests were not sufficiently personal and distinct from the interests of the general public to give them standing. The plaintiffs further allege that their alderman represents each one of them individually, and each of them expects any alderman to be honest, truthful and mindful of his duty as a public official. This interest, however, is not personal to these two plaintiffs; rather, it is shared by all residents of the 24th Ward. (See *People ex rel. Hiller v. Bevirt* (1938), 297 Ill.App. 335, 17 N.E.2d 629.) We conclude that the trial judge properly relied on *Turner* and *Allen* and held that the plaintiffs lacked standing to bring the *quo warranto* action.

The plaintiffs rely principally on *Kluk v. Lang* (1988), 125 Ill.2d 306, 126 Ill.Dec. 163, 531 N.E.2d 790. We do not believe that *Kluk* supports standing of the plaintiffs here. In *Kluk* the supreme court emphasized that the plaintiffs were challenging the constitutionality of a statute which, in effect, denied their right to vote to fill a vacancy in the state legislature. The court also emphasized the fact that *Kluk* involved a complaint for

declaratory judgment and that the standing requirements for *quo warranto* were "stricter than those for declaratory judgment standing." 125 Ill.2d at 320, 126 Ill.Dec. 163, 531 N.E.2d 790.

For the foregoing reasons, the judgment of the circuit court is affirmed.

Judgment affirmed.

RAKOWSKI and LAPORTA, JJ., concur.

Ill.App. 1 Dist., 1992.

Henderson v. Miller

228 Ill.App.3d 260, 592 N.E.2d 570, 170 Ill.Dec. 134

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Editor's Note: Additions are indicated by Text
and deletions by ~~Text~~.

Appellate Court of Illinois,
Second District.

Thomas CULLERTON, Petitioner–Appellee,
v.

DU PAGE COUNTY OFFICERS ELECTORAL
BOARD, Charlotte Mushow, J.P. “Rick” Carney,
Jeanne McNamara, and Donna M. Rozycki,
Respondents–Appellants.

No. 2–08–0605.

Aug. 7, 2008.

Background: County electoral board sought review of judgment of the Circuit Court, Du Page County, Paul M. Fullerton, J., reversing board's decision to exclude state senate candidate from ballot in an upcoming election.

Holding: The Appellate Court, O'Malley, J., held that candidate's participation in opposing political party's previous primary election rendered him ineligible to run as candidate for his newly chosen party.

Reversed.

West Headnotes

[1] Election Law 142T 242

142T Election Law

142TVI Nominations

142Tk240 Nomination by Primary Election

142Tk242 k. Declaration of candidacy;
qualification as candidate. Most Cited Cases
(Formerly 144k126(4) Elections)

Election Law 142T 275

142T Election Law

142TVI Nominations

142Tk275 k. Effect of irregularities or
defects. Most Cited Cases
(Formerly 144k126(4) Elections)

States 360 28(1)

360 States

360II Government and Officers

360k24 Legislature

360k28 Members

360k28(1) k. In general. Most Cited

Cases

(Formerly 144k126(4) Elections)

Candidate for State Senate could not run as his district's Democratic candidate in the general election since he had voted in the most recent and prior Republican primary elections and, thus, did not meet the statutory requirement that he be a “qualified primary voter” of the Democratic party; plain and ordinary meaning of requirement that candidate be a qualified primary voter of the party for which he seeks nomination mandated, if nothing else, that candidate have been eligible to vote in the primary for that party in the most recent primary election preceding candidate's filing statement of candidacy. S.H.A. 10 ILCS 5/7–10.

[2] Election Law 142T 27

142T Election Law

142TII Election Districts, Boards, and Officers

142Tk27 k. Powers and proceedings of board
of elections. Most Cited Cases
(Formerly 144k54 Elections)

The standards for review of an electoral board decision are essentially identical to those applicable to review of an administrative agency decision.

[3] Election Law 142T 27

142T Election Law

142TII Election Districts, Boards, and Officers

142Tk27 k. Powers and proceedings of board
of elections. Most Cited Cases
(Formerly 144k54 Elections)

An electoral board's findings of fact are deemed prima facie true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence; an electoral board's decisions on questions of law, however, are not binding on a reviewing court, which will instead review such questions under the nondeferential de novo standard of review.

[4] Election Law 142T 27

142T Election Law

142TII Election Districts, Boards, and Officers

142Tk27 k. Powers and proceedings of board of elections. Most Cited Cases

(Formerly 144k54 Elections)

An electoral board's rulings on mixed questions of law and fact, questions on which the historical facts are admitted, the rule of law is undisputed, and the only remaining issue is whether the facts satisfy a statutory standard, will not be disturbed on review unless clearly erroneous.

[5] Statutes 361 1072

361 Statutes

361III Construction

361III(A) In General

361k1071 Intent

361k1072 k. In general. Most Cited

Cases

(Formerly 361k181(1))

The primary goal for a court interpreting a statute is to give effect to the intention of the legislature.

[6] Statutes 361 1122

361 Statutes

361III Construction

361III(D) Particular Elements of Language

361k1122 k. Defined terms; definitional provisions. Most Cited Cases

(Formerly 361k188, 361k179)

Statutes 361 1123

361 Statutes

361III Construction

361III(D) Particular Elements of Language

361k1123 k. Undefined terms. Most Cited

Cases

(Formerly 361k188)

When a statute defines the terms it uses, those terms must be construed according to the definitions contained in the statute; however, without such a statutory definition, courts must look to the remaining language of the statute to find evidence of legislative intent.

[7] Statutes 361 1091

361 Statutes

361III Construction

361III(B) Plain Language; Plain, Ordinary, or Common Meaning

361k1091 k. In general. Most Cited Cases

(Formerly 361k188)

The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.

****775** Burton S. Odelson, Odelson & Sterk, Ltd., Evergreen Park, Philip A. Luetkehans, P.C., Attorney At Law, Itasca, Patrick K. Bond, Mary E. Dickson, Keith E. Letsche, Bond, Dickson & Associates, P.C., Wheaton, IL, for Appellant.

Michael C. Dorf, Adducci, Dorf, Lehner, Mitchell & Blankenship, PC. Courtney C. Nottage, Attorney At Law, Chicago, IL, for Appellee.

Justice O'MALLEY delivered the opinion of the court:

*****749 *990** Respondents, Du Page County Officers Electoral Board (Board), Charlotte Mushow, J.P. "Rick" Carney, Jeanne McNamara, and Donna M. Rozycki, appeal from the decision of the circuit court reversing the decision of the Board to exclude petitioner, Thomas Cullerton, from the November 2008 ballot as the Democratic candidate for Senator of the 23rd Legislative District of

Illinois. On appeal, respondents assert that the circuit court erred and that the Board correctly excluded petitioner from the ballot, for two reasons. First, respondents argue that the resolution nominating petitioner to fill the vacancy on the Democratic ballot was deficient for its failure to include on its face the date on which the Democratic 23rd Legislative District Committee (Committee) selected him as its nominee for the November 2008 general election. See 10 ILCS 5/7—61 (West 2006). Second, respondents argue that petitioner cannot run as a Democratic candidate in the general election because he voted in the Republican primary election and thus does not meet the statutory requirement that he be a “qualified primary voter” of the Democratic party. See 10 ILCS 5/7—10 (West 2006). Because we find the second argument dispositive, we confine our discussion to that issue. For the reasons that follow, we reverse the judgment of the circuit court and hold that petitioner is ineligible to be placed on the November 2008 ballot as the Democratic candidate for Senator of the 23rd Legislative District of Illinois.

The parties do not dispute the relevant underlying facts. In February 2008, petitioner voted in the Republican Party primary election in Du Page County, just as he had in 2004 and 2006. After the 2008 primary election, the Democratic Party had no candidate for Senator of the 23rd Legislative District. On April 1, petitioner filed a resolution*991 from the Committee, nominating him as the candidate to fill the Democratic vacancy on the general election ballot. On that same day, petitioner filed a statement of candidacy stating that he was a “qualified primary voter of the Democratic Party.” Rozycki filed objections to petitioner's candidacy, and the Board sustained the objections. Petitioner petitioned the circuit court for judicial review of the decision, and the circuit court thereafter reversed the Board's decision and ruled that petitioner's name could appear on the November 2008 general election ballot. The circuit court stayed enforcement of its order, pending this

timely appeal.

[1][2][3][4] The standards for review of an electoral board decision are essentially identical to those applicable to review of an administrative agency decision. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 209–10, 319 Ill.Dec. 887, 886 N.E.2d 1011 (2008). An electoral board's findings of fact are ***750 ***776 deemed *prima facie* true and correct and will not be overturned on appeal unless they are against the manifest weight of the evidence. *Cinkus*, 228 Ill.2d at 210, 319 Ill.Dec. 887, 886 N.E.2d 1011. An electoral board's decisions on questions of law, however, are not binding on a reviewing court, which will instead review such questions under the nondeferential *de novo* standard of review. *Cinkus*, 228 Ill.2d at 210–11, 319 Ill.Dec. 887, 886 N.E.2d 1011. An electoral board's rulings on mixed questions of law and fact—questions on which the historical facts are admitted, the rule of law is undisputed, and the only remaining issue is whether the facts satisfy a statutory standard—will not be disturbed on review unless clearly erroneous. *Cinkus*, 228 Ill.2d at 211, 319 Ill.Dec. 887, 886 N.E.2d 1011.

In their arguments on appeal, the parties dispute the import of section 7—10 of the Election Code (Code) (10 ILCS 5/7—10 (West 2006)) in light of the Supreme Court's decision in *Kusper v. Pontikes*, 414 U.S. 51, 94 S.Ct. 303, 38 L.Ed.2d 260 (1973), and our supreme court's subsequent decision in *Sperling v. County Officers Electoral Board*, 57 Ill.2d 81, 309 N.E.2d 589 (1974). We therefore begin by discussing those two cases as they affect section 7—10 of the Code.

In 1971, the Code housed three relevant restrictions on changes in political party affiliation: it restricted party changes by (1) voters; (2) signers of nominating petitions; and (3) candidates for nomination in primary elections. *Sperling*, 57 Ill.2d at 81–82, 309 N.E.2d 589.

The restriction on party changes by voters

appeared in section 7—43 of the Code, which provided as follows:

“No person shall be entitled to vote at a primary:

* * *

(d) If he has voted at a primary * * * of another political party within a period of 23 calendar months next preceding the calendar month in which such primary is held * * *.” Ill.Rev.Stat.1971, ch. 46, par. 7—43(d).

*992 The last paragraph of section 7—10 of the Code contained a restriction both on signers of nominating petitions and on candidates:

“For the purpose of determining eligibility to sign a petition for nomination or eligibility to be a candidate * * *, a ‘qualified primary elector’ of a party (1) is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of the date on which the petition must be filed * * *.” Ill.Rev.Stat.1971, ch. 46, par. 7—10.

In another, preceding portion of section 7—10, the Code placed an additional restriction on candidates by requiring that a candidate file a statement of candidacy that attests, among other things, that the candidate “is a qualified primary voter of the party to which the [nominating petition] relates.” Ill.Rev.Stat.1971, ch. 46, par. 7—10. (Although petitioner does not seek to be a primary candidate but instead a general election candidate, he was still statutorily required to meet this requirement. See 10 ILCS 5/7—61 (West 2006) (any resolution to fill a vacancy after a primary “shall be accompanied by a Statement of Candidacy, as prescribed in Section 7—10”).) As the Code was written in 1971, the definition of the term “qualified primary voter of [a] party” (as the phrase appeared in the statement-of-candidacy requirement) was provided in the above-quoted last paragraph of section 7—10, and it required that the voter not have requested a primary ballot of any

other party within two years.

777 *751 Thus, in 1971, the Code barred voters, signers of primary petitions, and candidates from participating in primaries of one political party if they had participated in the primary of another political party within two years.

In *Kusper*, the Supreme Court held that the restriction on voters changing parties was unconstitutional on the ground that it violated voters' first and fourteenth amendment freedom to associate. *Kusper*, 414 U.S. at 57–61, 94 S.Ct. at 307–10, 38 L.Ed.2d at 266–69. The Supreme Court explained its holding as follows:

“There can be little doubt that § 7—43(d) substantially restricts an Illinois voter's freedom to change his political party affiliation. One who wishes to change his party registration must wait almost two years before his choice will be given effect. Moreover, he is forced to forgo participation in any primary elections occurring within the statutory 23-month hiatus. The effect of the Illinois statute is thus to ‘lock’ the voter into his pre-existing party affiliation for a substantial period of time following participation in any primary election, and each succeeding primary vote extends this period of confinement.” *Kusper*, 414 U.S. at 57, 94 S.Ct. at 308, 38 L.Ed.2d at 267.

Though it has been declared unconstitutional and thus cannot be *993 enforced, section 7—43(d) remains a part of the Code today. See 10 ILCS 5/7—43(d) (West 2006).

In *Sperling*, our supreme court faced the question of whether the remaining two types of restrictions—the restriction on party changes by signers of petitions and the restrictions on candidates—were constitutional in light of *Kusper*. See *Sperling*, 57 Ill.2d at 81–82, 309 N.E.2d 589 (summarizing types and sources of restrictions and quoting both the last paragraph of section 7—10 and the statement-of-candidacy portion of section

7—10). The supreme court held that “[t]he same reasoning which moved the *Kusper* court to hold invalid the 23-month restriction upon voter changes of political parties is * * * applicable to the 2-year restriction upon those voters who wish to sign primary nominating petitions, and that restriction, too, must fall.” *Sperling*, 57 Ill.2d at 84, 309 N.E.2d 589. On the issue of whether a restriction on candidates’ party changes could pass constitutional muster, the supreme court found it “clear that the State’s interest in preserving the integrity of the political process will support a reasonable restriction upon party-switching by candidates,” and it noted case law indicating that a two-year restriction on candidate party-switching is constitutional. See *Sperling*, 57 Ill.2d at 84–85, 309 N.E.2d 589. However, even so, the supreme court concluded its discussion as follows:

“That the restriction on candidates could be upheld against constitutional challenge is, however, of little help here. Such restrictions and establishment of the period of time involved are, within constitutional limitations, matters for legislative determination. We have here a legislatively designed plan for the preservation of the integrity of the political process which provided substantially similar restrictions for all three categories: voters, voters who sign primary nominating petitions, and voters who wish to be candidates. That plan has now been held to be constitutionally impermissible as to two of those three categories. The legislature has had no real opportunity since *Kusper* was announced last November to respond, and we cannot say absence of action by it indicates acquiescence. Likewise, our decision in this case may prompt legislative action. In short, it seems to us that the restrictive provisions upon the several***752 **778 categories of voters are so closely related that the General Assembly would not have enacted the portion relating to candidates apart from some restrictions upon voters generally and, more particularly, those voters who desire to sign primary petitions. [Citation.] In these

circumstances the restrictions upon candidates cannot be considered independent and severable from the invalid portions of the plan.” *Sperling*, 57 Ill.2d at 86, 309 N.E.2d 589.

Indeed, the party-switching restrictions, especially the restrictions on *994 petition signers and candidates, were very interrelated in the 1971 version of the Code. Both the signer and the candidate restrictions were located in section 7—10. The candidate restriction requiring candidates to attest to being a “qualified primary voter of the party [whose nomination the candidate sought]” appeared to incorporate the “ ‘qualified primary voter’ of a party” definition found in the last paragraph of section 7—10 (Ill.Rev.Stat. 1971, ch. 46, par. 7—10), and that last paragraph contained a restriction both on signers and on candidates. (As noted above, this candidate restriction in the last paragraph was in addition to the restriction on candidates in the statement-of-candidacy portion of section 7—10 of the Code.) Thus, the supreme court held that, absent some indication from the legislature that one of the types of restrictions on party-changing could survive independent of the others, the court could not sever the restrictions on candidates from the unconstitutional restrictions on voters and signers of petitions.

After *Sperling*, the relevant portions of the Code persisted unchanged until 1990, when the General Assembly enacted Public Act 86—1348 (Pub. Act 86—1348, eff. September 7, 1990), which removed the restriction that had been stricken in *Sperling* regarding signers of petitions. As relevant here, Public Act 86—1348 changed section 7—10 as follows (with strikeout used to show deletions and bold used to show additions):

~~“For the purpose of determining eligibility to sign a petition for nomination or eligibility to be a candidate under this Article, A ‘qualified primary elector’ of a party (1) is an elector who has not requested a primary ballot of any other party at a primary election held within 2 years of~~

~~the date on which the petition must be filed or (2) is a first-time voter in this State registered since the last primary of an even-numbered year preceding the date on which the petition must be filed, but no such person may not sign petitions for or be a candidate in the primary of more than one party.~~ Pub. Act 86—1348, eff. September 7, 1990.

The legislature did not, and to date has not, removed the statement-of-candidacy restriction in a preceding portion of section 7—10. See 10 ILCS 5/7—10 (West 2006) (candidate's statement of candidacy “shall state that the candidate is a qualified primary voter of the party to which the petition relates”).

Against that backdrop, we return to the instant case. As noted, respondents argue that petitioner was not a “qualified primary voter” of the Democratic Party, as required under section 7—10 of the Code. Petitioner offers two rebuttals. Because both of these rebuttals present questions of law, our review is *de novo*. *Cinkus*, 228 Ill.2d at 211, 319 Ill.Dec. 887, 886 N.E.2d 1011.

*995 First, petitioner argues that he need not have voted in the Democratic primary election in order to be considered a “qualified primary voter” of the Democratic Party. To support his argument, petitioner resorts initially to the statutory definition ***753 ***779 of a “qualified voter.” See 10 ILCS 5/3—1 (West 2006). Because petitioner meets the qualifications contained in that definition—he is a United States citizen of voting age—he argues that he is “[b]y definition under the Code * * * a ‘qualified primary voter.’ ” We disagree. It may very well be true that petitioner is a “qualified voter,” but the relevant inquiry in this case is whether he is a “qualified primary voter” of the Democratic Party, as required under section 7—10. Petitioner also cites the definition of “qualified primary elector” found in section 3—1.2 of the Code, which provides that, “[f]or the purpose of determining eligibility to sign a nominating petition,” the term “‘qualified primary elector’ ”

means “a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition.” 10 ILCS 5/3—1.2 (West 2006) ; see also *Sperling*, 57 Ill.2d at 83, 309 N.E.2d 589 (holding that there is no substantive difference between the phrases “qualified primary elector” and “qualified primary voter” as used in the Code). Again, petitioner invokes an incomplete test. The question here is not whether petitioner is a “qualified primary voter” but, rather, whether he is a “qualified primary voter” of the Democratic Party, as required under section 7—10. Petitioner makes no argument that he meets the party affiliation requirement of section 7—10.

[5][6][7] We agree with respondents that petitioner, who voted in the Republican and not the Democratic primary in at least the three primaries preceding the upcoming general election, cannot be considered a “qualified primary voter” of the Democratic Party under section 7—10. The primary goal for a court interpreting a statute is to give effect to the intention of the legislature. *Cinkus*, 228 Ill.2d at 216, 319 Ill.Dec. 887, 886 N.E.2d 1011. “It is well established that when a statute defines the terms it uses, those terms must be construed according to the definitions contained in the [statute].” *State Farm Mutual Automobile Insurance Co. v. Universal Underwriters Group*, 182 Ill.2d 240, 244, 231 Ill.Dec. 75, 695 N.E.2d 848 (1998). However, without such a statutory definition, courts must look to the remaining language of the statute to find evidence of legislative intent. “The best evidence of legislative intent is the language used in the statute itself, which must be given its plain and ordinary meaning.” *Cinkus*, 228 Ill.2d at 216, 319 Ill.Dec. 887, 886 N.E.2d 1011.

Though the Code at one time contained a definition of a “qualified primary voter” of the Democratic Party, that definition was deleted via Public Act 86—1348. Thus, we resort to the plain language to *996 determine the meaning of the

phrase. The plain and ordinary meaning of the requirement that a candidate be a qualified primary voter of the party for which he seeks a nomination mandates, if nothing else, that the candidate have been eligible to vote in the primary for that party in the most recent primary election preceding the candidate's filing the statement of candidacy. Because petitioner voted in the 2006 Republican primary, he was prohibited under the Code from voting in the Democratic primary that same year. See 10 ILCS 5/7—44 (West 2006) (a voter is to be given the primary ballot for the political party with which he declares himself affiliated, and “no person declaring his affiliation with a statewide established political party may vote in the primary of any other statewide political party on the same election day”). Consistent with *Kusper*, he could have switched his party allegiance in the next primary. However, until that next primary, his status was “locked” as a Republican primary voter. (The time between ***754 **780 primaries, and thus the time a voter's party status is “locked,” is typically two years, but that is not always so. In fact, the time between the 2008 primary and the 2006 primary was less than two years. See Public Act 95—6, eff. June 20, 2007 (changing primary date from third Tuesday in March to first Tuesday in February).) Therefore, at all times between the 2006 primary and the next primary, in 2008, petitioner was a qualified primary voter of the Republican Party, and he was not a qualified primary voter of the Democratic Party. Likewise, when petitioner chose to vote in the Republican and not the Democratic primary in 2008, he was barred by statute from voting in the Democratic primary that same year. Accordingly, at all times since the 2008 primary (and until the next primary, now scheduled for 2010), including the time at which petitioner submitted his statement of candidacy pursuant to section 7—10, he was not a qualified primary voter of the Democratic Party. We therefore reject petitioner's argument that he met the requirement, from section 7—10 of the Code, that he be a qualified primary voter of the Democratic party at the time of his nomination.

Second, petitioner asserts that, in light of *Sperling*, “there are no current restrictions on the right of a candidate in Illinois” to change parties. In his appellate brief, petitioner appears to rely on the above-quoted passage from *Sperling*, which states that, because the court could not assume that the restrictions on candidates could exist independently of the restrictions found to be unconstitutional, the court was left to conclude that none of the three restrictions on party-switching remained viable. See also *Dooley v. McGillicuddy*, 63 Ill.2d 54, 345 N.E.2d 102 (1976) (noting that legislature had not changed the Code in response to *Sperling* and thus applying the holding from *Sperling*). *997 However, since *Sperling*, the legislature has amended the Code in a manner that speaks to the point raised in *Sperling*. When it enacted Public Act 86—1348, the legislature excised all of the portions of section 7—10 that seemed, when *Sperling* was decided, to be inextricably linked to the statement-of-candidacy restriction on candidates. The legislature deleted: (1) the statutory definition of the phrase “qualified primary voter for a party” (which was referenced in the statement-of-candidacy portion of section 7—10); (2) the restriction on petition signers; and (3) one of the two restrictions on candidate party-switching then found in section 7—10. However, the legislature left intact the restriction on party-changing in the statement-of-candidacy portion of section 7—10. The legislature thus demonstrated that that candidate restriction could exist independently. Put another way, after the supreme court in *Sperling* held that it could not conclude that the unconstitutional restrictions on party-switching could be severed from the statement-of-candidacy restriction on candidates, the legislature severed the unconstitutional restriction on petition signers from the statement-of-candidacy restriction on candidates. Accordingly, contrary to petitioner's argument, the legislature has spoken on this issue—the Code provides that a candidate must be a qualified primary voter of the political party for which he seeks a nomination.

Because the parties did not refer to Public Act 86—1348 in their written arguments on appeal, we issued an order in advance of oral argument instructing them to be prepared to address the issue. At oral argument, petitioner asserted that Public Act 86—1348 removed all candidate restrictions from the Code. Petitioner misperceives the relevant portion of the Code. While it is true that Public Act 86—1348 removed the candidate restriction that had ***755 **781 appeared in the last paragraph of section 7—10, the public act did not remove the candidate restriction appearing in the statement-of-candidacy portion of section 7—10. It is that restriction that is relevant to this appeal. In asserting at oral argument that Public Act 86—1348 removed from the Code restrictions on candidate party-switching, petitioner overlooks the statutory language that forms the basis of our decision today.

For the reasons stated, we conclude that the limitation on candidate party-switching found in the statement-of-candidacy portion of section 7—10 of the Code, which requires that a candidate attest to being a “qualified primary voter” of the party whose nomination the candidate seeks, is now viable even in light of *Sperling*. Because petitioner fails that statutory requirement, we agree with the Board that he is not eligible to be placed on the November 2008 general election ballot as the Democratic candidate for Senator of the 23rd Legislative District of Illinois.

***998** For the foregoing reasons, we reverse the decision of the circuit court of Du Page County.

Reversed.

HUTCHINSON and ZENOFF, JJ., concur.

Ill.App. 2 Dist., 2008.

Cullerton v. Du Page County Officers Electoral Bd.

384 Ill.App.3d 989, 894 N.E.2d 774, 323 Ill.Dec.

748

END OF DOCUMENT

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)	
and LING-YI MARGOT WANG,)	
)	
Petitioners-Objectors,)	
)	
v.)	No.
)	
TIO HARDIMAN and BRUNELL DONALD,)	
)	
Respondents-Candidates.)	

VERIFIED OBJECTORS' PETITION

Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang, hereinafter sometimes referred to as the "Objectors", state as follows:

1. The Objector Wharton resides at 3704 Madison, Unit 2, in the City of Bellwood, State of Illinois, 60104, and is a duly qualified, legal and registered voter at that address; Objector Smith resides at 5154 South King Drive, in the City of Chicago, State of Illinois, 60615, and is a duly qualified, legal and registered voter at that address; and, Objector Wang resides at 4880 North Marine Drive, Apartment 601, in the City of Chicago, State of Illinois, 60640, and is a duly qualified, legal and registered voter at that address.

2. The Objectors' interest in filing this Petition is that of voters desirous that the laws governing the filing of nomination papers for the office of Governor and Lieutenant Governor of the State of Illinois ("Office") are properly complied with, and that only qualified candidates appear on the ballot for said offices.

3. The Objectors make the following objections to the purported nomination papers ("Nomination Papers") of Tio Hardiman, a purported candidate for Governor of the State of Illinois, and Brunell Donald, a purported candidate for Lieutenant Governor of the State of Illinois, to be voted for at the Election on March 18, 2014 ("election"). The Objectors state that the Nomination Papers are insufficient in fact and law for the following reasons:

4. Pursuant to state law, nomination papers for Democratic candidates for Governor and Lieutenant Governor of the State of Illinois to be voted for at the Election to be held March 18, 2014, must contain the signatures of not fewer than 5,000 duly qualified, registered and legal voters of the State of Illinois collected in the manner prescribed by law. In addition, said Nomination Papers must truthfully allege the qualifications of the candidates, be gathered and presented in the manner provided for in the Illinois Election Code, and otherwise executed in the form provided by law.

5. The Nomination Papers contain petition sheets with the names of persons who are not registered voters at the addresses shown opposite their respective names, as is set forth

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STATE BOARD OF ELECTIONS

specifically in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, Column A, "Signer not registered at address shown within political district", in violation of the Illinois Election Code.

6. The Nomination Papers contain the names of persons who did not sign said papers in their own proper persons, and said signatures are not genuine and are forgeries, as is set forth specifically in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, Column B, "Signature not genuine signature of purported voter", in violation of the Illinois Election Code.

7. The Nomination Papers contain petition sheets with the names of persons who for whom addresses are stated which are not in the Candidates' District and such signatures are not valid, as is set forth specifically in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading Column C, "Signer resides outside district", in violation of the Illinois Election Code.

8. The Nomination Papers contain the names of persons for whom the signer's address is missing or incomplete as is set forth specifically in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, Column D, "Signer's address missing or incomplete", in violation of the Illinois Election Code.

9. The Nomination Papers contain the names of persons who have signed the Nomination Papers more than one time as is set forth specifically in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, Column E, "Signer signed more than once at sheet/line indicated", in violation of the Illinois Election Code. The reference to the sheet and line of the duplicate signature is found in Column E or in Column F "Miscellaneous".

10. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator, and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading "Circulator did not sign petition".

11. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not signed by the circulator in his/her own proper person or not signed at all and is missing the circulator's signature, and such signatures are not genuine and are forgeries, and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, "Circulator's signature not genuine", and specifically sheet 476 (white-out name).

12. The Nomination Papers contain petition sheets which bear a circulator's affidavit on which the circulator's address is incomplete, and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, "Circulator's address is incomplete or missing".

13. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not properly sworn to before a Notary Public or other appropriate officer, in that the notarial jurat lacks proper form, as prescribed by law, and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, "Circulator's affidavit not properly notarized". These sheets include 79, 85, 89, 266, 267, 272, 423, 431, 461, 496, 306, 330, 375, 500, 511, 582 and 574. These sheets are missing a notarial seal or county or address or date or city or village or notary signature, or the name of who the notary is notarizing.

14. The Nomination Papers contain petition sheets which bear a circulator's affidavit which is not sworn to before a Notary Public or other appropriate officer, and every signature on such sheets is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein, under the heading, "Sheet not notarized by a Notary".

15. The Nomination Papers contain petition sheet number 465 which bears a notary's affidavit which states the date as 4-11-13, prior to the first day allowed by law to circulate the petition and is invalid, and every signature on such sheet is invalid.

16. The Nomination Papers contain Petition Sheets which bear a circulator's affidavit which is false, signed by a Circulator who does not reside at the address given, and every signature on such sheet is invalid, as is set forth in the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein under the heading "Circulator does not reside at address shown", and specifically sheets 88, 297, 299 and 394 (no Angela Balls at that address; all of Derrick Jones' sheets who does not state his correct residence address (389, 391, 406, 461, 511, 534, 544, 551, 558, 560 and 562)).

17. The Nomination Papers contain numerous sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are those who circulated the sheets in which objections are made in Column B of the Objection and Appendix-Recapitulation Sheets. Specifically, but without limitation, the disregard of the Election Code evidenced by the actions of those circulators includes the submission of purported voters' signatures which were not signed by the voters in their own proper persons.

18. Petition Sheets number 2 and 50 are the same sheet and contain exactly the same signatures on the same lines. Pursuant to the Election Code, duplicate photocopies of petition sheets are not allowed. Sheets 2 and 50 must be stricken in their entirety.

19. Petition sheet numbers 542 and 545 contain a circulator's oath that does not state the residence address of the circulator and is in violation of the Illinois Election Code and all signatures on these sheets are invalid.

20. The Nomination Papers contain a Statement of Candidacy that is false in that the candidate, Brunell Donald, was not a qualified or registered voter at 913 E. 54th Street, Chicago, Illinois, 60615 on November 21, 2013 when she swore to the Statement of Candidacy under oath. At the time of signing and swearing to the Statement, and at the time of filing the Statement of Candidacy (November 25, 2013), Candidate Donald was registered to vote at 5200 S. Blackstone (Apt. #1007), Chicago, Illinois, 60615. The false Statement of Candidacy is a nullity and invalidates the candidacy of Donald.

21. The Nomination Papers contain sheets circulated by individuals whose sheets demonstrate a pattern of fraud and disregard of the Election Code to such a degree that every sheet circulated by said individuals is invalid, and should be invalidated in order to protect the integrity of the electoral process. Such circulators are: Legia King, Jerry Norvell, Leroy Dinkins, Patrice Allen, Timothy Lee, Cynthia Guerrero, Cecil Lyles Jr., Mae McLeninen, Clyde McLemore, Richard Stewart, Andrea Maples, Dwight McConnell, Beverly Smith, Carla Clair, Derrick Jones, Ferial Jackson and Bobby Hamilton.

22. The candidate, Brunell Donald, was not at the time of signing the Statement of Candidacy, a resident and/or registered voter at the address shown on the Statement of Candidacy, as required by law, and thus the Statement of Candidacy is false. Candidate Brunell was a registered voter at 5200 S. Blackstone, #1007, Chicago, Illinois, and must live and reside at that address if she is registered to vote therein.

23. Because of the above-listed irregularity in the Statement of Candidacy, the Nomination Papers are invalid in their entirety since, according to Illinois law, nominations for Governor and Lieutenant Governor in the primary election must be submitted together and both candidates must be qualified and eligible to be candidates and hold the offices sought.

24. Circulator Derrick Jones lists his residence address at 1220 S. Homan, but upon information and belief, he is a resident and registered voter at 733 N. Homan, thus invalidating the Circulator's Affidavit as being false and invalidating each and every sheet circulated by Derrick Jones.

25. Sheets 581, 585 and 586 purported to be circulated by Mae McLeninen are forgeries of purported signers whose names have been forged not once – not twice – but three times. The Circulator has sworn under oath that she has seen the signers sign their names and the names are genuine. She has not told the truth under oath and has vitiated her affidavit. All petition sheets signed by this Circulator because of the pattern of fraud should be stricken. These sheets are 567, 568, 569, 570, 581, 582, 585, 586, 587, 595 and 596.

26. Sheets 580, 589 and 597 are purportedly circulated by a Timothy Lee. These three sheets are total forgeries signed by the same person or persons and are classic "round tabled" and forged signatures. The Circulator has sworn under oath that he has seen the signers sign their names and the names are genuine. He has not told the truth under oath and has vitiated his affidavit. All petition sheets signed by this Circulator because of the pattern of fraud should

be stricken. These sheets are 91, 105, 157, 158, 172, 173, 174, 184, 185, 206, 275, 450, 497, 499, 501, 576, 580, 589 and 597.

27. That Circulator Cynthia Guerrero used two different addresses as her residence address when Illinois law requires the circulator to state the address where they live. All of Circulator Guerrero's petition sheets are invalid for failure to state her true residence address or those sheets that do not state her true residence address are invalid. Her petition sheets are 4, 7, 26, 37, 65, 90, 97, 100, 166, 218, 292, 293 and 295.

28. That Circulator Bobby Hamilton signed as a registered voter at one address (3333 N. Madison) and as a circulator at a different address (3337 W. Madison). If he is a registered voter at 3333 W. Madison, then he does not live at 3337 W. Madison, and has signed his Circulator's statement falsely under oath, vitiating the sworn statement on each and every sheet signed by him as Circulator (sheets 74, 77, 80, 83, 84, 212, 266, 289).

29. That purported Circulator Angela Balls does not exist nor reside at the address listed on her Circulator's affidavit invalidating sheets 88, 297, 299 and 394.

30. That Circulator Jerry Norvell signed as the purported Circulator on sheets 272 and 286 which were notarized by two different notaries; however, sheets 272 and 286 are duplicates, or were signed by someone other than the purported signer and are forgeries. The Circulator has sworn under oath that he has seen the signers sign their names and the names are genuine. He has not told the truth under oath and has vitiated his affidavit. All petition sheets signed by this Circulator because of the pattern of fraud should be stricken. These sheets are 24, 70, 99, 117, 127, 136, 139, 141, 148, 169, 170, 190, 245, 247, 254, 263, 269, 272, 284, 286, 408, 457, 466, 489, 504, 529, 543 and 594.

31. That every signature on every sheet is not in compliance with the Illinois Election Code since the address of each and every signer does not contain the State of residence. Additionally, all signatures that do not contain a designation of county and/or village or city are not in conformity with the Illinois Election Code and should be stricken, and are hereby objected to.

32. The Nomination Papers contain less than 5,000 validly collected signatures of qualified and duly registered legal voters of the State of Illinois, signed by such voters in their own proper person with proper addresses, below the number required under Illinois law, as is set forth by the objections herein and the Objection and Appendix-Recapitulation Sheets attached hereto and incorporated herein.

33. The Objection and the Objection and Appendix-Recapitulation Sheets are incorporated herein and the objections made therein are a part of this Objectors' Petition.

WHEREFORE, the Objectors request a hearing on the objections set forth herein, an examination by the aforesaid Electoral Board of the official records relating to voters in the applicable district, to the extent that such examination is pertinent to any of the matters alleged herein, a ruling that the Nomination Papers are insufficient in law and fact, and a ruling that the name of Tio Hardiman, candidate for Governor of the State of Illinois, and Brunell Donald, candidate for Lieutenant Governor of the State of Illinois, shall not appear and not be printed on the ballot for the aforementioned offices to be voted for at the Election to be held on March 18, 2014.

Michelle D. Warton
Objector

King-yi Margaret D.
Objector

Brenda A. Smith
Objector

Burton S. Odelson
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(312) 422-5560

VERIFICATION

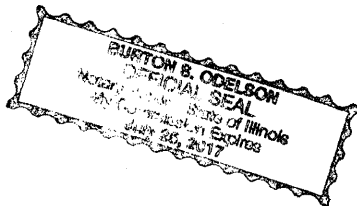
State of Illinois)
) ss.
County of Cook)

The undersigned, being first duly sworn, deposes and states that he/she is one of the Objectors in the above Verified Objectors' Petition, that he/she has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.

Michelle D. Wharton
OBJECTOR

Subscribed and sworn to before me, a Notary Public, by Michelle D. Wharton
on Dec 8, 2013.

Burton S. Odelson
NOTARY PUBLIC



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8 South Michigan Avenue, Suite 3500
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(312) 422-5560

VERIFICATION

State of Illinois)
) ss.
County of Cook)

The undersigned, being first duly sworn, deposes and states that he/she is one of the Objectors in the above Verified Objectors' Petition, that he/she has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.

Ling Yi Margaret Wang
OBJECTOR

Subscribed and sworn to before me, a Notary Public, by Ling Yi Margaret Wang
on Dec 8, 2013.

Burton S. Odelson
NOTARY PUBLIC



Burton S. Odelson
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VERIFICATION

State of Illinois)
) ss.
County of Cook)

The undersigned, being first duly sworn, deposes and states that he/she is one of the Objectors in the above Verified Objectors' Petition, that he/she has read the contents thereof, and that the allegations therein are true to the best of the undersigned's knowledge and belief.

Burke J. Smith
OBJECTOR

Subscribed and sworn to before me, a Notary Public, by Burke J. Smith
on Dec 8, 2013.

Burton S. Odelson
NOTARY PUBLIC



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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)
and LING-YI MARGOT WANG,)

Petitioners-Objectors,)

v.)

No. 13 SOEB GP 511

TIO HARDIMAN and BRUNELL DONALD,)

Respondents-Candidates.)

NOTICE OF FILING

TO: State Officers Electoral Board
c/o Steve Sandvoss
100 W. Randolph Street, 14-100
Chicago, IL 60601
SSandvoss@elections.il.gov

Randy Crumpton
Attorney for Respondents-Candidates
70 W. Madison Street, Suite 1400
Chicago, IL 60602
rancrump@aol.com

Barbara Goodman
Hearing Officer
barb@barbgoodmanlaw.com

PLEASE TAKE NOTICE that on January 14, 2014, the undersigned caused to be filed with the State Officers Electoral Board, **EXCEPTIONS TO HEARING EXAMINER'S RECOMMENDATION**, a copy of which is attached hereto and herewith served upon you.

By: _____

Burton S. Odelson

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PROOF OF SERVICE

I, Burton S. Odelson, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via e-mail before 2:00 p.m. on January 14, 2014.

Burton S. Odelson

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)
and LING-YI MARGOT WANG,)

Petitioners-Objectors,)

v.)

No. 13 SOEB GP 511

TIO HARDIMAN and BRUNELL DONALD,)

Respondents-Candidates.)

EXCEPTIONS TO HEARING EXAMINER'S RECOMMENDATION

NOW COME the Petitioners-Objectors, Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang ("Objectors"), by and through their attorneys, Burton S. Odelson of Odelson & Sterk, Ltd. and James P. Nally, P.C., and takes exception to that part of the Hearing Examiner's Recommendation not to sustain the Objection to remove Tio Hardiman's name from the ballot. In support of this exception, the Objectors state as follows:

I. BACKGROUND

1. The Hearing Examiner correctly found that the Lieutenant Governor Candidate, Brunell Donald, filed a false Statement of Candidacy and should be removed from the ballot.
2. The Hearing Examiner also found that she did not have the authority to recommend that the Governor Candidate, Tio Hardiman, be removed from the ballot.
3. The Hearing Examiner also found that the Election Code, at 5/7-10, did not spell out that the Governor Candidate should be removed if the Lieutenant Governor candidate was disqualified.
4. The Objectors were remiss in not more fully setting forth the plain and obvious

reasons that the remaining member of the Governor/Lieutenant Governor “team” could not survive himself. The Objectors, through counsel, did not fully set forth the entire changes in the law which, when taken as a whole, clearly establishes that one candidate cannot be on the ballot apart from the other.

5. The Objectors believed the statute was clear and unambiguous, on its face, in the last line of 5/7-10:

“In the case of the offices of Governor and Lieutenant Governor, a joint petition including one candidate for each of those offices must be filed.” (Emphasis added.)

6. This last sentence was added by P.A. 96-1018 (Ex. A.), introduced as HB 5820 by Representative Lou Lang; passed out of the Senate Elections Committee, Senator Terry Link, Chairman, on a unanimous bi-partisan 8-0 vote. The Governor signed the legislation into law on July 12, 2010.

7. It is very important to note the sentence that precedes this new legislation in 5/7-10 in the last paragraph:

“Petitions of Candidates for nomination for offices herein specified, to be filed with the same officer, may contain the names of 2 or more candidates of the same political party for the same or different offices.” (Emphasis added.)

8. Thus, petitions containing multiple political party candidates may be filed; but candidates for Governor and Lieutenant Governor MUST be on a JOINT Petition. Objectors submit there is a world of difference between “may” and “must” and “joint.”

9. As will be set forth below, P.A. 96-1018 did not just amend 5/7-10, it amended 5/7-19; 5/7-46; 5/7-52; 5/7-53; and 5/24-B-6. The significance of these amendments were not

included in the filings before the Hearing Examiner since it was Objectors' counsel's belief that 5/7-10 spoke for itself. Thus, the Hearing Examiner did not have the benefit of the further argument raised herein from an examination of the entire Public Act 96-1018.

10. Further, again not argued by the Objectors to the Hearing Examiner, to allow only the Governor candidate to remain on the ballot while all other Republican and Democratic candidates must run as a team, presents a serious and real equal protection of the law problem since Candidate Hardiman would be treated differently than any of the other "team" Candidates who followed the mandatory dictates of the statute.

11. As argued before the Hearing Examiner, and as found in the Recommended Decision, Candidate Donald not only falsified her Statement of Candidacy, but falsified her affidavit for provisional ballot on November 6, 2012 when she attested to the statement that she resided at 5200 S. Blackstone when she knew she had moved from that address in the 5th Ward, 15th precinct, to 913 E. 54th Street in the 4th Ward, 27th precinct, in July of 2012. The Chicago Board of Elections, quite correctly, found she did not reside on Blackstone and rejected her request for provisional ballot (See Ex. B).

II. LEGISLATIVE CHANGES

12. P.A. 96-1018 amended 5/7-10 as set forth above. This was a substantial change since it required – in mandatory language (must) that the Governor and Lieutenant Governor must be submitted together, on the same petition. This is quite different than the direction in the sentence immediately preceding the new language – all within the same paragraph. The preceding sentence merely allows candidates to submit petitions together by using permissive language, "...may" contain the names of 2 or more candidates...."

13. Not only does the new language speak in mandatory language, "...must be filed.", but it also requires a joint petition, "...must be filed." The preceding sentence clearly speaks to discretionary filings of two or more candidates on the same petition.

14. Our courts have long held that the intent of the legislature should be construed from the language in the statute which must be given its plain and ordinary meaning. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 319 Ill.Dec. 887, 886 N.E.2d 1011 (2008).

15. There can be no doubt that when the legislature is directing that an act must take place, it is a mandatory direction.

16. A review of the other Election Code changes mandated by P.A. 96-1018 also reveals the legislature's mandatory direction.

A. 5/7-19 directs how primary ballots are to be arranged and printed.

Included in the language from P.A. 96-1018:

"The names of each team of candidates for Governor and Lieutenant Governor, however, shall be printed within a bracket, and a single square shall be printed in front of the bracket." (Ex. C) (Emphasis added.)

B. 5/7-46 describes the method of voting of a ballot as amended by P.A. 96-1018:

"A cross (X) in the square in front of the bracket enclosing the names of a team of candidates for Governor and Lieutenant Governor counts as one vote for each of those candidates." (Ex. D) (Emphasis added.)

C. 5/7-46, in its second paragraph, describes how to cast a write-in vote with the P.A. 96-1018 amendment:

“A primary elector, however, may not by this method vote separately for Governor and Lieutenant Governor but must write in the names of candidates of his or her choice for both offices and indicate his or her choice of those names by placing a single square to the left of those names and placing in that square a cross (X).” (Ex. D) (Emphasis added.)

D. 5/7-52 explains the method of precinct canvass of votes. Paragraph four (4) was amended by P.A. 96-1018 in describing how to count primary ballots:

“The same column, however, shall be used for both names of the same team of candidates for Governor and Lieutenant Governor.” (Ex. E) (Emphasis added.)

E. 5/24B-6 explains how the write-in lines appear on the ballot as added by P.A. 96-1018:

“In the case of write in lines for the offices of Governor and Lieutenant Governor, 2 lines shall be printed within a bracket and a single square shall be printed in front of the bracket.” (Ex. F)

Thus, all of the legislative changes pursuant to P.A. 96-1018 were made in mandatory language clearly spelling out that the Governor and Lieutenant must file a joint petition and both run as a team.

Legislative intent is clear and unambiguous in P.A. 96-1018. If there is any doubt as to the intent of the General Assembly, the Bill Analysis of HB 5820, which became P.A. 96-1018, fills in any of the blanks, (Ex. G), as follows:

"Executive Summary

...
Candidates for Governor and Lieutenant Governor will be required to file a joint petition with both names listed on the petition and be listed together on the ballot. A candidate for either Governor or Lieutenant Governor would not be able to run without a running mate.

This legislation passed the Senate 56-0 and the House 90-5-3. The Illinois State Board of Elections asked for an Amendment to allow write-in procedures to be consistent with the changes made by the Bill. (See House Amendment #1, Ex. G)

III. DEFINITIONS

A. Joint

Black's Law Dictionary, BLACK'S LAW DICTIONARY 913 (9th ed. 2009), defines "joint":

1. (of a thing) common to or shared by two or more persons or entities
2. (of a person or entity) combined, united, or sharing with another

B. Both

Merriam-Webster, Merriam-Webster.com, *both*, <http://www.merriam-webster.com/dictionary/both> (accessed January 14, 2014), defines "both":

- used as a function word to indicate and stress the inclusion and stress the inclusion of each of two or more things specified by coordinated words, phrases or clauses
- used to indicate that two things or people are being referred to rather than just one

C. Team

Merriam-Webster, Merriam-Webster.com, *team*, <http://www.merriam-webster.com/dictionary/team> (accessed January 14, 2014) defines “team”:

- a group of people who work together
- a number of persons associated together in work or activity

D. Must

Merriam-Webster, Merriam-Webster.com, *must*, <http://www.merriam-webster.com/dictionary/must> (accessed January 14, 2014) defines “must”:

- to be obliged or required by morality, law or custom
- an essential or necessary thing
- when used as a noun means: necessity, essential, requirement, duty, fundamental, obligation, imperative, requisite, prerequisite, necessary thing

There can be no doubt that the General Assembly, when using the above words in P.A. 96-1018, when referring to the Governor and Lieutenant Governor seeking to run in a primary election, mandates that both candidates must run as a team and file a joint petition. If the Candidate for Governor is allowed to be put on the ballot without a running mate, there is no team; there is no joint petition; there is only one – not both candidates, as the statute mandates. Quite simply, to allow a single candidate to run, the “must” used in the statute becomes “may,” as used in 5/7-10 in the sentence immediately before the language in issue herein. That is an absurd result considering the plain and ordinary language and meaning used by the legislature in P.A. 96-1018.

IV. EQUAL PROTECTION OF THE LAW

Article III, Section 3, of the Illinois Constitution requires, “All elections shall be free and equal.” Section 4 of Article III mandates the General Assembly, “insure the integrity of the election process” and that “the conduct of elections shall be general and uniform.”

Article 7 of the Election Code sets forth certain requirements for candidates to enter primaries. The Constitution, Article III, Sections 1 and 4, allow the General Assembly to prescribe requirements. One of those requirements to enter the primary and be a candidate of an established political party, is to be a qualified primary voter. *Cullerton v. DuPage Board of Elections*, 384 Ill.App.3d 989 (2008), and *Hossfield v. Illinois State Board of Elections*, 238 Ill.2d 418 (2010), uphold this requirement. Although the Lieutenant Governor Candidate meets the Constitutional requirements for Lieutenant Governor, she does not qualify to enter the primary pursuant to Article 7 of the Election Code. She could have run as an Independent under Article 10 and gained ballot access, but chose to enter the primary and gain the benefit of having an established political party be her standard bearer. Thus, there is no additional Constitutional burden on her candidacy – only the requirements set forth by the General Assembly to run in a primary.

Once choosing to be an Article 7 – Primary Candidate, the same rules applicable to the other Democrat or Republican Governor and Lieutenant Governor candidates apply; namely, you must run as a team. Both candidates must file a joint petition. To allow Candidate Hardiman to run without a Lieutenant Governor running mate does not put the other “team” candidates on equal ground as Hardiman. In other words, all of the Republican and Democratic candidates for Governor and Lieutenant Governor are being treated different and unequal than Hardiman. This

violates Article I, Section 2, of the Illinois Constitution which guarantees all persons equal protection of the laws.

V. CONCLUSION

The Democratic and Republican bill analysis clearly, in specific language, requires the Governor and Lieutenant Governor candidates to run together as a team. The language of P.A. 1018 clearly, in specific, unambiguous language, mandates the Governor and Lieutenant Governor candidates run together as a team – whether it be on their petitions, the ballot, or as write-ins. The old saying, “There is no “I” in team,” applies to this case. Mr. Hardiman is not a “team.” Just as Governor Quinn and the four Republican Governor and Lieutenant Governor teams were required to file and run as a team, so must Mr. Hardiman.

The State Officers Electoral Board, in compliance with the clear and unambiguous language of P.A. 96-1018 cannot allow a single candidate (whether it be Governor or Lieutenant Governor) to run in the primary election by themselves.

WHEREFORE, the Objectors respectfully request the General Counsel recommend and the Electoral Board sustain the objections to the “joint” petition of Tio Hardiman and Brunell Donald.

Respectfully submitted,

By: 

Burton S. Odelson, one of Objectors' attorneys

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Illinois General Assembly

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Bill Status of HB5820 96th General Assembly

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Short Description: ELECTIONS-LIEUTENANT GOVERNOR

House Sponsors

Rep. [Lou Lang](#) - [Arthur L. Turner](#) - [Paul D. Froehlich](#) - [Cynthia Soto](#) - [Karen A. Yarbrough](#), [Daniel V. Beiser](#) and [Barbara Flynn Currie](#)

Senate Sponsors

(Sen. [Kwame Raoul](#))

Last Action

Date	Chamber	Action
7/12/2010	House	Public Act 96-1018

Statutes Amended In Order of Appearance

10 ILCS 5/7-10	from Ch. 46, par. 7-10
10 ILCS 5/7-19	from Ch. 46, par. 7-19
10 ILCS 5/7-46	from Ch. 46, par. 7-46
10 ILCS 5/7-52	from Ch. 46, par. 7-52
10 ILCS 5/7-53	from Ch. 46, par. 7-53

Synopsis As Introduced

Amends the Election Code. Provides for the joint nomination of candidates for the offices of Governor and Lieutenant Governor.

House Floor Amendment No. 1

Adds reference to:

[10 ILCS 5/24B-6](#)

Further amends the Election Code. Makes conforming changes in provisions governing the appearance of the ballot used with optical scan technology voting systems.

Actions

Date	Chamber	Action
2/10/2010	House	Filed with the Clerk by Rep. Lou Lang
2/10/2010	House	First Reading
2/10/2010	House	Referred to Rules Committee
2/16/2010	House	Assigned to Elections & Campaign Reform Committee
2/23/2010	House	Do Pass / Short Debate Elections & Campaign Reform Committee ; 006-003-000
2/23/2010	House	Placed on Calendar 2nd Reading - Short Debate
2/24/2010	House	Added Chief Co-Sponsor Rep. Arthur L. Turner

2/24/2010	House	Added Chief Co-Sponsor <u>Rep. Paul D. Froehlich</u>
2/24/2010	House	Added Chief Co-Sponsor <u>Rep. Cynthia Soto</u>
2/25/2010	House	Added Chief Co-Sponsor <u>Rep. Karen A. Yarbrough</u>
3/2/2010	House	Second Reading - Short Debate
3/2/2010	House	Placed on Calendar Order of 3rd Reading - Short Debate
3/8/2010	House	House Floor Amendment No. 1 Filed with Clerk by <u>Rep. Lou Lang</u>
3/8/2010	House	House Floor Amendment No. 1 Referred to <u>Rules Committee</u>
3/10/2010	House	House Floor Amendment No. 1 Recommends Be Adopted <u>Rules Committee</u> ; 003-000-000
3/10/2010	House	Recalled to Second Reading - Short Debate
3/10/2010	House	House Floor Amendment No. 1 Adopted by Voice Vote
3/10/2010	House	Placed on Calendar Order of 3rd Reading - Short Debate
3/12/2010	House	Third Reading - Short Debate - Passed 090-005-003
3/12/2010	House	Added Co-Sponsor <u>Rep. Daniel V. Beiser</u>
3/12/2010	House	Added Co-Sponsor <u>Rep. Barbara Flynn Currie</u>
3/15/2010	Senate	Arrive in Senate
3/15/2010	Senate	Placed on Calendar Order of First Reading
3/15/2010	Senate	Chief Senate Sponsor <u>Sen. Kwame Raoul</u>
3/15/2010	Senate	First Reading
3/15/2010	Senate	Referred to <u>Assignments</u>
4/6/2010	Senate	Assigned to <u>Elections</u>
4/14/2010	Senate	Do Pass <u>Elections</u> ; 008-000-000
4/14/2010	Senate	Placed on Calendar Order of 2nd Reading April 15, 2010
4/21/2010	Senate	Second Reading
4/21/2010	Senate	Placed on Calendar Order of 3rd Reading April 22, 2010
4/27/2010	Senate	Third Reading - Passed; 056-000-000
4/27/2010	House	Passed Both Houses
5/26/2010	House	Sent to the Governor
7/12/2010	House	Governor Approved
7/12/2010	House	Effective Date January 1, 2011
7/12/2010	House	Public Act 96-1018

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Langdon D. Neal, *Chairman*
Richard A. Cowen, *Secretary*
Marisel A. Hernandez, *Commissioner*

Lance Gough, *Executive Director*



Form: 266
Rv. 09/01/09

Ex B

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Lance Gough, Executive Director of the Board of Election Commissioners for the City of Chicago in the County and State aforesaid and keeper of the records and files of said Board, do hereby certify that the attached Hava – Provisional Voters Alpha List is a true copy of the original list in our office from the November 6, 2012 General Election.

Further affiant sayeth not. -----

All of which appears in the records and files of said Board.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed the Seal of said Board at
my office in the City of Chicago, this
10th day of January A.D. 2014

LANCE GOUGH
EXECUTIVE DIRECTOR

Name	Address	Birth Date	SSN	Driver License	Pct/Wd	Correct Action
DOMITRZ, TADEUSZ	5361 N LYNCH AV 60630	01/03/1932	000-00-0000	D536-8003-2003	36/45	ACCEPTED
DONAGHUE, SHELIA M	6431 N SHERIDAN RD APT#1850 60626	09/10/1992	000-00-1624		17/49	ACCEPTED
DONAHUE, WILLIAM EDWARD	5932 N KNOX AV 60646	01/22/1955	000-00-3765	D500-9255-5022	20/39	REJECTED NOT REGISTERED
DONALD, BRUNELL	5200 S BLACKSTONE AV 60615	08/05/1975	000-00-0000	D543-0727-5822	1/4	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONALD, ETHEL C	5041 S PRINCETON AV APT#201 60609	05/05/1938	000-00-0974		36/3	REJECTED WRONG PCT BASED ON VOTERS ADDRESS
DONALD, JOE B	8151 S VERNON AV 60619	06/21/1954	000-00-0473	5434-2254-176D	13/20	REJECTED WRONG PCT BASED ON VOTERS ADDRESS
DONALD, MARCUS T	7249 S ARTESIAN AV 60629	05/05/1992	000-00-6197	5435-5892-129D	33/18	REJECTED NOT REGISTERED
DONALD, MAURICIA R	5521 S BISHOP ST 60636	07/15/1992	000-00-7688		14/16	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONALDSON, DIANNE MARIE	1333 W BIRCHWOOD AV APT#203 60626	01/29/1951	000-00-5182		16/49	ACCEPTED
DONALDSON, FLOYD N	1550 W 69 ST 60636	01/29/1957	000-00-3952	D543-2405-7029	35/17	REJECTED WRONG PCT BASED ON VOTERS ADDRESS
DONALDSON, TORRE	9235 S MAY ST 60620	09/16/1993	000-00-4437		19/21	ACCEPTED
DONALSON, BARRY LADON	1645 W OGDEN AV APT#618 60612	12/24/1966	000-00-2470		10/27	ACCEPTED
DONATI, ANNANGELA	1147 W GRAND AV APT#2 60622	08/22/1960	000-00-0000	D530-0006-0839	36/1	REJECTED WRONG PCT BASED ON VOTERS ADDRESS
DONDIEGO, RUBICELIS	3913 W 75 PL 60652	09/02/1954	000-00-0515	5377-2054-850D	45/18	ACCEPTED
DONDLINGER, JACLYN M	1022 S RACINE APT#202 60607	07/14/1982	000-00-0000	D534-4338-2800	10/28	ACCEPTED
DONERSON, ROBERT L	903 E 84 ST APT#2FL 60619	01/01/1900	000-00-9637		41/8	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONES, JULIO	2061 N OAKLEY 60647	05/18/1958	000-00-2522	D520-4205-8142	29/32	ACCEPTED
DONES, LINDA M	2061 N OAKLEY 60647	04/18/1961	000-00-5879	D520-5336-1711	29/32	ACCEPTED
DONGUILLO, MICHAEL JOSEPH	1137 W MONROE ST APT#8 60607	01/19/1975	000-00-0000	D521-5507-5019	10/25	REJECTED CANCEL PER CANVASS
DONLEY, NATASHA	2156 N LAPORTE APT#H 60639	05/14/1972	000-00-5429		8/36	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONNALLY, STEVEN	3640 W MONTROSE AV APT#2E 60618	03/21/1977	000-00-0000	D540-7927-7083	22/35	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONNAN, LUCAS GABLE	5910 N KENMORE AV APT#C11 60660	11/04/1986	000-00-0976		16/48	ACCEPTED
DONNELLY, KRISTINE M	1300 W ALTGELD ST APT#142 60614	12/13/1966	000-00-0000	D540-5136-6954	24/2	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONNELLY, MEGAN K	1945 W ARGYLE APT#1 60640	12/15/1982	000-00-0000	D540-5518-2956	25/40	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONNELLY, PETER	3500 S SANGAMON ST APT#208 60609	04/16/1964	000-00-5393	D540-6606-4109	25/11	REJECTED NOT REGISTERED
DONNER, DARKENYA S	2053 W 71 ST 60636	04/30/1978	000-00-1244		33/17	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DONNER, JUANITA	7807 S CONSTANCE AV 60649	10/09/1971	000-00-2383		13/8	ACCEPTED
DONNER, SHANELE	7011 S EAST END AV APT#H 60649	03/12/1983	000-00-2808		10/5	REJECTED NOT REGISTERED
DONOHUE, DANIEL EMMETT	3220 S GREEN ST 60608	07/21/1971	000-00-7728	D500-1657-1207	5/11	REJECTED NOT REGISTERED
DOOLEY, CLAIRE THERESE	6101 N FOREST GLEN 60646	07/04/1990	000-00-0000	D400-1187-0790	15/39	REJECTED NOT REGISTERED
DOPTIS-WEINBERG, REBECCA	555 W CORNELIA AV APT#1108 60657	04/06/1977	000-00-3927	W516-7307-7699	33/46	ACCEPTED
DORADO, FELIX D	5518 W SCHOOL ST 60641	09/23/1936	000-00-2836		17/30	REJECTED NOT REGISTERED AT ADDRESS GIVEN
DORADO, GERARDO RUDY	6963 W BERWYN AV 60656	10/10/1966	000-00-2703	D630-2966-6403	38/41	ACCEPTED
DORAN, CHAZZ C	7028 S KIMBARK AV APT#2 60637	08/20/1994	000-00-4574	6501-0394-237D	30/5	ACCEPTED
DORANTES, DENISE G	2240 N KARLOV AV 60639	07/08/1992	000-00-0000	D653-1679-7794	34/26	REJECTED NOT REGISTERED AT ADDRESS GIVEN

Formerly cited as IL ST CH 46 ¶ 7-19

C

Effective: January 1, 2011

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 10. Elections

Act 5. Election Code (Refs & Annos)

Article 7. The Making of Nominations by Political Parties (Refs & Annos)

→ → 5/7-19. Primary ballots; arrangement and printing

§ 7-19. The primary ballot of each political party for each precinct shall be arranged and printed substantially in the manner following:

1. Designating words. At the top of the ballot shall be printed in large capital letters, words designating the ballot, if a Republican ballot, the designating words shall be: "REPUBLICAN PRIMARY BALLOT"; if a Democratic ballot the designating words shall be: "DEMOCRATIC PRIMARY BALLOT"; and in like manner for each political party.

2. Order of Names, Directions to Voters, etc. Beginning not less than one inch below designating words, the name of each office to be filled shall be printed in capital letters. Such names may be printed on the ballot either in a single column or in 2 or more columns and in the following order, to-wit:

President of the United States, State offices, congressional offices, delegates and alternate delegates to be elected from the State at large to National nominating conventions, delegates and alternate delegates to be elected from congressional districts to National nominating conventions, member or members of the State central committee, trustees of sanitary districts, county offices, judicial officers, city, village and incorporated town offices, town offices, or of such of the said offices as candidates are to be nominated for at such primary, and precinct, township or ward committeemen. If two or more columns are used, the foregoing offices to and including member of the State central committee shall be listed in the left-hand column and Senatorial offices, as defined in Section 8-3, shall be the first offices listed in the second column.

Below the name of each office shall be printed in small letters the directions to voters: "Vote for one"; "Vote for not more than two"; "Vote for not more than three". If no candidate or candidates file for an office and if no person or persons file a declaration as a write-in candidate for that office, then below the title of that office the election authority instead shall print "No Candidate".

Next to the name of each candidate for delegate or alternate delegate to a national nominating convention shall appear either (a) the name of the candidate's preference for President of the United States or the word "uncommitted" or (b) no official designation, depending upon the action taken by the State central committee pursuant to Section 7-10.3 of this Act.

Formerly cited as IL ST CH 46 ¶ 7-19

Below the name of each office shall be printed in capital letters the names of all candidates, arranged in the order in which their petitions for nominations were filed, except as otherwise provided in Sections 7-14 and 7-17 of this Article. Opposite and in front of the name of each candidate shall be printed a square and all squares upon the primary ballot shall be of uniform size. **The names of each team of candidates for Governor and Lieutenant Governor, however, shall be printed within a bracket, and a single square shall be printed in front of the bracket.** Spaces between the names of candidates under each office shall be uniform and sufficient spaces shall separate the names of candidates for one office from the names of candidates for another office, to avoid confusion and to permit the writing in of the names of other candidates.

Where voting machines or electronic voting systems are used, the provisions of this Section may be modified as required or authorized by Article 24 or Article 24A, whichever is applicable.

CREDIT(S)

Laws 1943, vol. 2, p. 1, § 7-19, eff. July 1, 1943. Amended by Laws 1943, vol. 2, p. 250, § 1, eff. July 17, 1943; Laws 1944, First Sp.Sess., p. 2, § 1, eff. July 1, 1944; Laws 1957, p. 1135, § 1, eff. July 5, 1957; Laws 1963, p. 2269, § 1, eff. Aug. 5, 1963; Laws 1965, p. 2220, § 1, eff. Aug. 2, 1965; P.A. 76-1253, § 1, eff. Sept. 15, 1969; P.A. 77-1647, § 1, eff. Sept. 24, 1971; P.A. 77-1805, § 1, eff. Jan. 13, 1972; P.A. 77-2829, § 18, eff. Dec. 22, 1972; P.A. 78-255, § 61, eff. Oct. 1, 1973; P.A. 81-135, § 1, eff. July 19, 1979; P.A. 83-33, § 1, eff. Jan. 1, 1984; P.A. 95-862, § 5, eff. Aug. 19, 2008; P.A. 96-1018, § 5, eff. Jan. 1, 2011.

Formerly Ill.Rev.Stat.1991, ch. 46, ¶ 7-19.

HISTORICAL AND STATUTORY NOTES

The amendment by P.A. 77-2829 revised and combined the multiple amendments made in 1971 by the 77th General Assembly.

Section 68 of P.A. 77-2829, certified December 22, 1972, provided:

“This revisory and combining Act of 1972 takes effect July 1, 1972.”

The 1973 Revisory Act, P.A. 78-255, stated in section 61 that in each of the sections enumerated therein, amended by two or more Public Acts of the 77th General Assembly, the latest Public Act was based on and incorporated all prior amendments to that Section made by earlier Public Acts of the 77th General Assembly.

Source. Laws 1927, p. 459, § 35; Laws 1928, First Sp.Sess., p. 40, § 1; Laws 1935, p. 805, § 1; Ill.Rev.Stat.1941, ch. 46, ¶ 399.

LIBRARY REFERENCES

Formerly cited as IL ST CH 46 ¶ 7-19

Elections ⌨ 126(5).

Westlaw Topic No. 144.

C.J.S. Elections §§ 215, 217 to 219.

NOTES OF DECISIONS

Assent to grouping 2

Nature of primary 1

1. Nature of primary

Primary is general election insofar as a precinct committeeman is concerned. *Whitsell v. Rutherford*, App.1969, 118 Ill.App.2d 401, 255 N.E.2d 34. Election Law ⌨ 164

2. Assent to grouping

An unsuccessful candidate in a primary election was bound by the grouping on the ballot assented to by him, though a successful candidate in another group received fewer votes than he did. *People ex rel. Frole v. Czarnecki*, 1912, 100 N.E. 282, 256 Ill. 567. Election Law ⌨ 325

10 I.L.C.S. 5/7-19, IL ST CH 10 § 5/7-19

Current through P.A. 98-616 of the 2013 Reg. Sess.

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END OF DOCUMENT

Formerly cited as IL ST CH 46 ¶ 7-46

C

Effective: January 1, 2011

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 10. Elections

Act 5. Election Code (Refs & Annos)

Article 7. The Making of Nominations by Political Parties (Refs & Annos)

→ → 5/7-46. Voting of ballot; writing in names

§ 7-46. On receiving from the primary judges a primary ballot of his party, the primary elector shall forthwith and without leaving the polling place, retire alone to one of the voting booths and prepare such primary ballot by marking a cross (X) in the square in front of and opposite the name of each candidate of his choice for each office to be filled, and for delegates and alternate delegates to national nominating conventions, and for committeemen, if committeemen are being elected at such primary. **A cross (X) in the square in front of the bracket enclosing the names of a team of candidates for Governor and Lieutenant Governor counts as one vote for each of those candidates.**

Any primary elector may, instead of voting for any candidate for nomination or for committeeman or for delegate or alternate delegate to national nominating conventions, whose name is printed on the primary ballot, write in the name of any other person affiliated with such party as a candidate for the nomination for any office, or for committeeman, or for delegates or alternate delegates to national nominating conventions, and indicate his choice of such candidate or committeeman or delegate or alternate delegate, by placing to the left of and opposite the name thus written a square and placing in the square a cross (X). **A primary elector, however, may not by this method vote separately for Governor and Lieutenant Governor but must write in the names of candidates of his or her choice for both offices and indicate his or her choice of those names by placing a single square to the left of those names and placing in that square a cross (X).**

Where voting machines or electronic voting systems are used, the provisions of this section may be modified as required or authorized by Article 24 or Article 24A, whichever is applicable.

CREDIT(S)

Laws 1943, vol. 2, p. 1, § 7-46, eff. July 1, 1943. Amended by Laws 1965, p. 2220, § 1, eff. Aug. 2, 1965; P.A. 96-1018, § 5, eff. Jan. 1, 2011.

Formerly Ill.Rev.Stat.1991, ch. 46, ¶ 7-46.

HISTORICAL AND STATUTORY NOTES

Formerly cited as IL ST CH 46 ¶ 7-52

Effective: August 12, 2011

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 10. Elections

Act 5. Election Code (Refs & Annos)

Article 7. The Making of Nominations by Political Parties (Refs & Annos)

→ → **5/7-52. Precinct canvass of votes; method**

§ 7-52. Immediately upon closing the polls, the primary judges shall proceed to canvass the votes in the manner following:

- (1) They shall separate and count the ballots of each political party.
- (2) They shall then proceed to ascertain the number of names entered on the applications for ballot under each party affiliation.
- (3) If the primary ballots of any political party exceed the number of applications for ballot by voters of such political party, the primary ballots of such political party shall be folded and replaced in the ballot box, the box closed, well shaken and again opened and one of the primary judges, who shall be blindfolded, shall draw out so many of the primary ballots of such political party as shall be equal to such excess. Such excess ballots shall be marked "Excess-Not Counted" and signed by a majority of the judges and shall be placed in the "After 6:00 p.m. Defective Ballots Envelope". The number of excess ballots shall be noted in the remarks section of the Certificate of Results. "Excess" ballots shall not be counted in the total of "defective" ballots.
- (4) The primary judges shall then proceed to count the primary ballots of each political party separately; and as the primary judges shall open and read the primary ballots, 3 of the judges shall carefully and correctly mark upon separate tally sheets the votes which each candidate of the party whose name is written or printed on the primary ballot has received, in a separate column for that purpose, with the name of such candidate, the name of his political party and the name of the office for which he is a candidate for nomination at the head of such column. **The same column, however, shall be used for both names of the same team of candidates for Governor and Lieutenant Governor.**

Where voting machines or electronic voting systems are used, the provisions of this section may be modified as required or authorized by Article 24 or Article 24A, whichever is applicable.

CREDIT(S)

Laws 1943, vol. 2, p. 1, § 7-52, eff. July 1, 1943. Amended by Laws 1957, p. 1450, § 1, eff. July 6, 1957; Laws 1961, p. 2509, § 1, eff. Aug. 1, 1961; Laws 1965, p. 2220, § 1, eff. Aug. 2, 1965; P.A. 80-484, § 1, eff. Oct. 1, 1977; P.A. 96-1018, § 5, eff. Jan. 1, 2011; P.A. 97-333, § 40, eff. Aug. 12, 2011.

C

Effective: January 1, 2011

West's Smith-Hurd Illinois Compiled Statutes Annotated Currentness

Chapter 10. Elections

Act 5. Election Code (Refs & Annos)

Article 24B. Electronic, Mechanical or Electric Voting Systems with Precinct Tabulation Optical Scan Technology Capability (Refs & Annos)

→ → 5/24B-6. Ballot Information; Arrangement; Electronic Precinct Tabulation Optical Scan Technology Voting System; Absentee Ballots; Spoiled Ballots

§ 24B-6. Ballot Information; Arrangement; Electronic Precinct Tabulation Optical Scan Technology Voting System; Absentee Ballots; Spoiled Ballots. The ballot information, shall, as far as practicable, be in the order of arrangement provided for paper ballots, except that the information may be in vertical or horizontal rows, or on a number of separate pages or displays on the marking device. Ballots for all questions or propositions to be voted on should be provided in a similar manner and must be arranged on the ballot sheet or marking device in the places provided for such purposes. Ballots shall be of white paper unless provided otherwise by administrative rule of the State Board of Elections or otherwise specified.

All propositions, including but not limited to propositions calling for a constitutional convention, constitutional amendment, judicial retention, and public measures to be voted upon shall be placed on separate portions of the ballot sheet or marking device by utilizing borders or grey screens. Candidates shall be listed on a separate portion of the ballot sheet or marking device by utilizing borders or grey screens. Whenever a person has submitted a declaration of intent to be a write-in candidate as required in Sections 17-16.1 and 18-9.1, a line or lines on which the voter may select a write-in candidate shall be printed below the name of the last candidate nominated for such office. Such line or lines shall be proximate to an area provided for marking votes for the write-in candidate or candidates. The number of write-in lines for an office shall equal the number of persons who have filed declarations of intent to be write-in candidates plus an additional line or lines for write-in candidates who qualify to file declarations to be write-in candidates under Sections 17-16.1 and 18-9.1 when the certification of ballot contains the words "OBJECTION PENDING" next to the name of that candidate, up to the number of candidates for which a voter may vote. **In the case of write-in lines for the offices of Governor and Lieutenant Governor, 2 lines shall be printed within a bracket and a single square shall be printed in front of the bracket.** More than one amendment to the constitution may be placed on the same portion of the ballot sheet or marking device. Constitutional convention or constitutional amendment propositions shall be printed or displayed on a separate portion of the ballot sheet or marking device and designated by borders or grey screens, unless otherwise provided by administrative rule of the State Board of Elections. More than one public measure or proposition may be placed on the same portion of the ballot sheet or marking device. More than one proposition for retention of judges in office may be placed on the same portion of the ballot sheet or marking device. Names of candidates shall be printed in black. The party affiliation of each candidate or the word "independent" shall appear near or under the candidate's name, and the names of candidates for the same office shall be listed vertically under the title of that office, on separate pages of the marking device, or as

otherwise approved by the State Board of Elections. If no candidate or candidates file for an office and if no person or persons file a declaration as a write-in candidate for that office, then below the title of that office the election authority instead shall print "No Candidate". In the case of nonpartisan elections for officers of political subdivisions, unless the statute or an ordinance adopted pursuant to Article VII of the Constitution requires otherwise, the listing of nonpartisan candidates shall not include any party or "independent" designation. Judicial retention questions and ballot questions for all public measures and other propositions shall be designated by borders or grey screens on the ballot or marking device. In primary elections, a separate ballot, or displays on the marking device, shall be used for each political party holding a primary, with the ballot or marking device arranged to include names of the candidates of the party and public measures and other propositions to be voted upon on the day of the primary election.

If the ballot includes both candidates for office and public measures or propositions to be voted on, the election official in charge of the election shall divide the ballot or displays on the marking device in sections for "Candidates" and "Propositions", or separate ballots may be used.

Absentee ballots may consist of envelopes, paper ballots or ballot sheets voted in person in the office of the election official in charge of the election or voted by mail. Where a Precinct Tabulation Optical Scan Technology ballot is used for voting by mail it must be accompanied by voter instructions.

Any voter who spoils his or her ballot, makes an error, or has a ballot returned by the automatic tabulating equipment may return the ballot to the judges of election and get another ballot.

CREDIT(S)

Laws 1943, vol. 2, p. 1, § 24B-6, added by P.A. 89-394, § 5, eff. Jan. 1, 1997. Amended by P.A. 89-700, § 5, eff. Jan. 17, 1997; P.A. 93-574, § 5, eff. Aug. 21, 2003; P.A. 95-699, § 5, eff. Nov. 9, 2007; P.A. 95-862, § 5, eff. Aug. 19, 2008; P.A. 96-1018, § 5, eff. Jan. 1, 2011.

Current through P.A. 98-616 of the 2013 Reg. Sess.

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BILL ANALYSIS**HOUSE BILL 5820**

LEGAL	John Gay (558-4897)		
RESEARCH			
SPONSOR	Lang		
DATE	2/10/10	UPDATE	3/9/10
COMMITTEE	Elections and Campaign Reform		

- **HOUSE AMENDMENT #1 (Pending):** HA #1 amends the underlying bill by adding the requirement that ballots contain 2 write-in lines contained within a bracket for offices of Governor and Lieutenant Governor. This will allow a voter to write-in candidates for Governor and Lieutenant Governor in a single area because the candidates are required to run jointly under the underlying bill. HA #1 is an initiative of the Illinois State Board of Elections so the write-in procedure is consistent with the changes made by the underlying bill.

EXECUTIVE SUMMARY

HB 5820 amends the Election Code by providing for the joint nomination for the offices of Governor and Lieutenant Governor during the general primary election.

Candidates for Governor and Lieutenant Governor will be required to file a joint petition with both names listed on the petition and be listed together on the ballot. A candidate for either Governor or Lieutenant Governor would not be able to run without a running mate.

Currently, candidates for the office of Governor and Lieutenant Governor file separate petitions, are nominated separately in the general primary election, and run jointly in the general election.

PROPOSERS/OPPONENTS

Proponents: Member Initiative.

Opponents: None at this time.

No Position: None at this time.

LIS STATUS**Last Action**

Date	Chamber	Action
3/2/2010	House	Placed on Calendar Order of 3rd Reading - Short Debate

Statutes Amended In Order of Appearance

<u>10 ILCS 5/7-10</u>	from Ch. 46, par. 7-10
<u>10 ILCS 5/7-19</u>	from Ch. 46, par. 7-19
<u>10 ILCS 5/7-46</u>	from Ch. 46, par. 7-46

10 ILCS 5/7-52

from Ch. 46, par. 7-52

10 ILCS 5/7-53

from Ch. 46, par. 7-53

Synopsis As Introduced

Amends the Election Code. Provides for the joint nomination of candidates for the offices of Governor and Lieutenant Governor.

Actions

Date	Chamber	Action
2/10/2010	House	Filed with the Clerk by Rep. Lou Lang
2/10/2010	House	First Reading
2/10/2010	House	Referred to <u>Rules Committee</u>
2/16/2010	House	Assigned to <u>Elections & Campaign Reform Committee</u>
2/23/2010	House	Do Pass / Short Debate <u>Elections & Campaign Reform Committee</u> ; 006-003-000
2/23/2010	House	Placed on Calendar 2nd Reading - Short Debate
2/24/2010	House	Added Chief Co-Sponsor Rep. Arthur L. Turner
2/24/2010	House	Added Chief Co-Sponsor Rep. Paul D. Froehlich
2/24/2010	House	Added Chief Co-Sponsor Rep. Cynthia Soto
2/25/2010	House	Added Chief Co-Sponsor Rep. Karen A. Yarbrough
3/2/2010	House	Second Reading - Short Debate
3/2/2010	House	Placed on Calendar Order of 3rd Reading - Short Debate
3/8/2010	House	House Floor Amendment No. 1 Filed with Clerk by Rep. Lou Lang
3/8/2010	House	House Floor Amendment No. 1 Referred to <u>Rules Committee</u>

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,
and LING-YI MARGOT WANG,

Petitioners-Objectors,

v.

TIO HARDIMAN and BRUNELL DONALD,

Respondents-Candidates.

No. 13 SOEB GP 511

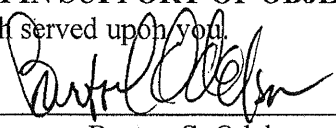
NOTICE OF FILING

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PLEASE TAKE NOTICE that on January 6, 2014, the undersigned caused to be filed with the State Officers Electoral Board a **MEMORANDUM IN SUPPORT OF OBJECTORS' PETITION**, a copy of which is attached hereto and herewith served upon you.

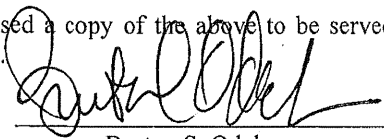
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PROOF OF SERVICE

I, Burton S. Odelson, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via e-mail before 5:00 p.m. on January 6, 2014.


Burton S. Odelson

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)
and LING-YI MARGOT WANG,)

Petitioners-Objectors,)

v.)

No. 13 SOEB GP 511

TIO HARDIMAN and BRUNELL DONALD,)

Respondents-Candidates.)

MEMORANDUM IN SUPPORT OF OBJECTORS' PETITION

NOW COME the Petitioners-Objectors, Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang ("Objectors"), by and through their attorneys, Burton S. Odelson of Odelson & Sterk, Ltd. and James P. Nally, P.C., and in Support of the Objectors' Petition pertaining to Candidate Brunell Donald's false Statement of Candidacy and the invalidation of the nomination petitions of Candidates Tio Hardiman and Brunell Donald, file this Memorandum of Law in support thereof.

I. INTEGRITY OF THE ELECTORAL PROCESS

The Illinois Constitution, Article III, Section 4, mandates that the General Assembly "insure...the integrity of the election process...". This is, perhaps, the foundation on which the State Board of Elections ("SBOE") and all other election authorities are grounded. Without an election process that is fair, equal, impartial, and honest, there is no system at all. The SBOE, pursuant to the Constitution, Article III, Section 5, has the duty of "general supervision over the administration of the **registration** and election laws throughout the State." (Emphasis added.)

Further, the Constitution, Article III, Section 1, allows the General Assembly to establish

registration requirements. The Election laws found in the Election Code further govern elections in Illinois. The SBOE, under the Code, has specific powers and duties found at 10 ILCS 5/1A-8.

These duties and powers include:

- (4) Prescribe and require the use of such uniform forms, notices, and other supplies...which shall be used by election authorities in the conduct of elections and **registrations** (Emphasis added.);
- (7) Review and inspect procedures and records relating to conduct of elections and registration as may be deemed necessary....;
- (12) Supervise the administration of the **registration** and election laws throughout the State (Emphasis added.);

The SBOE serves as the State Officers Electoral Board and is charged, pursuant to 5/10-10 of the Code of taking up the question:

“as to whether or not...nomination papers or petitions are in proper form and whether or not they were filed...under the conditions required by law..., and in general shall decide whether or not the ...nominating papers or petitions on file are valid or whether the objections thereto should be sustained...”.

The Electoral Board has additional authority as specified in its Rules of Procedure at paragraph 4, “Authority of the Board,” and has delegated its authority, in most instances, to Hearing Examiners (Rule 5). Thus, the Hearing Examiner may make a recommended determination considering the validity of an objection including whether a statement made under oath is true or false as it pertains to the stated objection. Examination and determination of a candidate’s registration status – just as a signer’s registration status (and, we would submit, even more critical when testing the truth of the Candidate’s sworn statement) is certainly within the purview of the Electoral Board and its Hearing Examiner.

Cases in the U.S. Supreme Court to the U.S. Court of Appeals, to the Illinois Supreme

and Appellate Courts, to the Circuit Courts, and the Electoral Boards, have spoken, time and time again, about the mandate of our judicial system to “preserve the integrity of the electoral process.” At the heart of this process is the affidavit requirement for candidates in the Statement of Candidacy, and the circulators in the circulator’s statement. The Statement of Candidacy (“Statement”) is sworn to before a notary which puts the candidate under oath and subject to perjury.

As the “integrity” cases have held, it does not require a specific intent – or knowledge that your statements are not true – just the fact that they are not true. *Huskey v. Municipal Officers Electoral Board for Oak Lawn*, 156 Ill.App.3d 201 (1987), 509 N.E.2d 555, 108 Ill.Dec. 859. “The fact that the circulator misunderstood her instructions or was not properly instructed, and thus did not have fraudulent intent does not alter our holding.” *Huskey*, at 205. Of course, *Huskey* recites a number of times how important it is to protect the integrity of our government (*Glenn v. Radden* (1984), 127 Ill.App.3d 712, 83 Ill.Dec. 9, 469 N.E.2d 616) and that the “...State’s legitimate interest in guarding the integrity of the electoral system has a rational relationship to the Board’s removal of petitioner’s name from the ballot.” *Huskey*, at 206.

Candidate and Attorney Brunell Donald swore under oath that she was a “qualified voter” at 913 E. 54th Street in the city of Chicago and that she was “a qualified Primary voter of the Democratic Party” at the time she signed the Statement (November 21, 2013). As the documentary evidence and sworn testimony reveals, Attorney Donald was neither. Her Statement of Candidacy, under oath, is false.

II. FACTS IN EVIDENCE

A. Vacating Blackstone Residence

The Candidate, Attorney Brunell Donald, testified, under oath, before the Hearing Examiner, that she lived at 5200 S. Blackstone, Chicago, prior to moving to her current address of 913 E. 54th Street, Chicago. She affirmatively testified a number of times that she and her family moved out of the Blackstone apartment into the 54th Street apartment in July, 2012. Attorney Donald testified she lives with her husband and three children. She registered to vote at Blackstone beginning on January 18, 2013, as evidenced by the records of the Chicago Board of Election Commissioners (Objectors' Group Ex. A-4). This record shows Attorney Donald being put on Inactive status on June 16, 2008 at her prior Flournoy address, and again Inactive on October 14, 2009, where she remained Inactive until changing her registration to Blackstone on January 18, 2013. **This is, of course, six (6) months after she moved from the Blackstone residence to the 54th Street apartment!** Thus, the change of address affidavit from Flournoy to Blackstone was false.

B. November 6, 2012 Election/False Statement-Affidavit #1

Interestingly, on November 6, 2012, Attorney Donald executed an affidavit (Objectors' Group Ex. A-6). This Chicago Board of Election Commissioner's document was received pursuant to a Freedom of Information Act request and was also testified to by Attorney Donald at the hearing. She testified, and the exhibit clearly shows, that on November 6, 2012, Attorney Donald swore, under oath, that she resided at 5200 S. Blackstone; resided in the precinct (Ward 5, Precinct 15, City of Chicago) for thirty (30) days preceding the election; am a duly registered voter in every respect; and am eligible to vote in this election. (Objectors' Ex. A-6). Of course,

we know through Attorney Donald's sworn testimony (and documentary evidence she produced) that she had abandoned the Blackstone residence four (4) months earlier in July of 2012, and moved, with her family, to 913 E. 54th Street (Ward 4, Precinct 27, City of Chicago). This affidavit, made to allow her to vote (as she testified), was false and is False Affidavit #1. It must be noted that according to Article 6 of the Election Code, and established case law, (as will be set forth hereinafter), Attorney Donald, upon abandoning her residence and taking up residency elsewhere, was not a registered voter at Blackstone on November 6, 2012 – and has NEVER been a legally qualified voter at Blackstone!!

C. Change of Address – Flournoy to Blackstone/False Statement-Affidavit #2

As set forth above in paragraph A, Objectors' Ex. A-4 reveals the Candidate changing her address and registering at the Blackstone address on January 18, 2013 – two (2) months after the November, 2012 election, and six (6) months after abandoning the Blackstone apartment. She went from Inactive status on Flournoy to Active status at Blackstone on January 18, 2013 – where she did not live! This is False Statement-Affidavit #2.

D. Petition Sheet #237/False Statement #3

Attorney Donald signed petition sheet #237 at line 8 (attached hereto as Exhibit A) and must have been confused as to where she resided! She lists her address as 5200 E. Blackstone and 913 E. 54th!! Of course, as a petition signer, she is affirmatively making the statement that she is a "qualified primary elector." In order to be a qualified primary elector, one must be a registered voter. Attorney Donald was not legally registered at either of the addresses listed opposite her name on line 8. This is False Statement #3.

E. Statement of Candidacy/False Statement-Affidavit #4

On November 21, 2013, Attorney Donald swore under oath that she is a qualified voter and a qualified primary voter at 913 E. 54th Street, Chicago, Illinois. However, anyway you cut it, Attorney Donald was not a qualified voter or a qualified primary voter on November 21, 2013, or on November 25, 2013 when she filed her nomination petitions. She was not a registered, qualified voter at 913 E. 54th Street; not a registered, qualified voter in Chicago; not a registered, qualified voter in the State of Illinois.

Attorney Donald registered to vote on November 27, 2013 as she testified at the hearing and as evidenced by the change of address affidavit submitted into evidence as Objectors' Ex. A-3. Thus, she became a qualified voter and a qualified Primary voter in the city of Chicago, State of Illinois, for the very first time since she was duly registered to vote at 3145 Flournoy, Chicago, on May 5, 2008 (see Objectors' Ex. A-4). After moving from Flournoy to Blackstone and from Blackstone to 54th Street (July, 2012), Attorney Donald did not legally register to vote at Blackstone in November, 2012 or January, 2013 since she had abandoned these residences. Her Statement of Candidacy is not truthfully sworn to and is False Statement-Affidavit #4.

III. QUALIFIED VOTER/QUALIFIED PRIMARY VOTER

This Electoral Board and Hearing Examiner are very well acquainted with the rather simple requirements of becoming a qualified voter. As stated in 10 ILCS 5/7-43:

(e) In cities, villages and incorporated towns having a board of election commissioners only voters registered as provided by Article 6 of this Act [10 ILCS 5/6-1 et seq.] shall be entitled to vote at such primary.

(f) No person shall be entitled to vote at a primary unless he is registered under the provisions of Articles 4, 5 or 6 of this Act [10 ILCS 5/4-1 et seq., 10 ILCS 5/5-1 et seq. or 10 ILCS 5/6-1 et seq.], when his registration is required by

any of said Articles to entitle him to vote at the election with reference to which the primary is held.

Further, 10 ILCS 5/6-27 clearly states under the heading “Persons entitled to vote and register”:

“After the first registration provided by this Article, the vote of no person, other than an elector voting pursuant to Article 20 of this Act...or exempt...from registration, shall be received in any election conducted under the provisions of this Article 6 or Articles 14 and 18 of this Act...unless such person has registered under the provisions of this Article in the precinct in which such person resides. For the purposes of this Article, the word “election” shall include primary.”

Section 10 ILCS 5/6-29 details how a person registers to vote and 10 ILCS 5/6-53 how a registration is transferred. The statutes are quite clear that you must have a residence (unless homeless) and you must register from your residence in the precinct. The task of transferring registration requires the completion of an application as Attorney Donald completed on November 27, 2013 (Objectors’ Ex. A-3); however, at the time she completed the registration application, she had already signed, under oath, her Statement of Candidacy (November 21, 2013) and filed her nomination papers containing the Statement (November 25, 2013). Thus, at the time of signing the Statement, Attorney Donald was not a qualified voter and was not a qualified Primary voter anywhere in Chicago or the State of Illinois.

The time to test qualifications for office and the truth and accuracy of candidate’s nomination papers is at the time of signing same – in this case, November 21, 2013. *Cinkus v. Village of Stickney Municipal Officers Electoral Board*, 228 Ill.2d 200, 319 Ill.Dec. 883, 886 N.E.2d 1011 (2008). As stated in *Cinkus* and most recently in *Goodman v. Ward*, 241 Ill.2d 398, 350 Ill.Dec. 300, 948 N.E.2d 580 (2011), “The statutory requirements governing statements of

candidacy and oaths are mandatory.” *Cinkus*, 228 Ill.2d at 219. Since the Statement is phrased in the present tense, the truth of the matters are tested as of the date it is signed and notarized. *Goodman*, supra.

The Election Code, at 10 ILCS 5/3-1.2, although on its face pertaining to petition signers (which Candidate Donald was at Sheet 237, Line 8; see Ex. A attached hereto) gives guidance as to a formal definition of a “qualified voter.”

“...the terms voter, registered voter, qualified voter, legal voter, elector, qualified elector, primary elector, and qualified primary elector, as used in this Code [as it is in 5/7-10] or in another Statute shall mean a person who is registered to vote at the address shown opposite his signature on the petition or was registered to vote at such address when he signed the petition.”

Black’s Law Dictionary defines “qualified voter” as a qualified “elector” as “the term that describes a person who fulfills all of the qualifications that are needed to vote; a legal voter; a person who meets the voting requirements for age, residency, and registration and who has the present right to vote in an election.” *Black’s Law Dictionary*, 596 (Bryan A. Garner ed.) 9th ed.

Thus, a person who swears under oath that they are a qualified voter, or qualified primary voter, is attesting to the fact that they have met and have fulfilled all of the qualifications needed to vote – in this instance, to be a qualified registered voter.

Attorney Donald was not a qualified voter; was not a registered voter; was not a qualified primary voter at the time she signed and swore to the statements made in the Statement of Candidacy of November 21, 2013. She must have realized this herself because she registered to vote on November 27, 2013 and became a qualified voter and qualified primary voter at that time. Unfortunately for Attorney Donald, she was not so qualified on November 21st when she

swore she was, and thus, swore to a false oath in her Statement of Candidacy.

IV. LEGAL PRECEDENCE ESTABLISHING QUALIFIED VOTER MUST BE A REGISTERED VOTER

Starting with *Stout v. Black*, (1972) 8 Ill.App.3d 167, 289 N.E.2d 456, and *Schuman v. Kumarick*, (1981) 102 Ill.App.3d 454, 58 Ill.Dec. 152, 430 N.E.2d 99, our Appellate Courts have held that a “qualified voter” is a person who has met all the statutory qualifications to vote, including registration when registration is required in the election for the particular office for which nomination is made. *Stout*, 8 Ill.App.3d at 170, 289 N.E.2d 456. In *Schuman*, the Court affirmatively stated that “qualified voter” and “registered voter” are not interchangeable. The Court stated that it was not enough that a voter be “qualified” – one must be a registered voter in order to be “qualified.” *Schuman*, 102 Ill.App.3d at 459, 58 Ill.Dec. 157, 430 N.E.2d 99.

In *Greene v. Board of Election Commissioners of the City of Chicago*, 112 Ill.App.3d 862, 68 Ill.Dec. 484, 445 N.E.2d 1337 (1983), the court stated:

“*Stout* and *Schuman* clearly state that to be a qualified voter under section 10-4, one must be registered to vote. We further hold, however, that a person who signs a nominating petition must be registered to vote at the residence address set forth on the nomination petition. We have read the provisions of the Election Code in *pari materia* and conclude that this requirement is in accordance with the legislature’s intent.”

This Court, as many others before and after it, has held:

“To hold otherwise would unnecessarily obfuscate the clear purpose of section 10-4, which seeks to preserve the integrity of the election process by insuring that signers of nominating petitions be duly registered voters in the political division in which they reside.” *Greene*, at 869.

Please note that 10-4 mirrors 7-10 in using the “qualified voter” language in both the Statement

of Candidacy requirements and petition requirements.

V. LEGAL PRECEDENCE/UNTRUTHFUL STATEMENT OF CANDIDACY

The Chicago Board of Elections in *Jefferies v. Jones*, 85-EB-RGA-14, had occasion to render a decision on fact situations as is found herein as to whether the Candidate's Statement of Candidacy was in compliance with section 7-10 of the Election Code. The Electoral Board found that the candidate had to be a registered voter at the time when the Statement was sworn to and not when the Statement was filed, citing *Delk v. McGowan*, 112 Ill.App.3d 735, 445 N.E.2d 1235 and *Schuman v. Kumarick*, 102 Ill.App.3d 454. *Schuman* was again cited for the proposition that a "qualified voter" must be as registered voter. The Electoral Board also cited the Election Code at 3-1.2 as further defining "qualified voter." *Jefferies v. Jones*, 85-EB-RGA-14 (1985).

The Chicago Board again had occasion to address the Statement of Candidacy issue in *Cruz v. Colt*, 86-EB-RES-1. The Board invalidated the Statement of Candidacy because the candidate was not a registered voter on the date of execution of the Statement. The Board cited *In Re: Mary Petruchius-Gorman*, 82-CO-EB-21, where the Cook County Electoral Board found the Statement invalid because the candidate failed to change her name on her voter's registration.

In *McKennie v. Carol Mosley-Braun*, 99-EB-ALD-163, the Chicago Electoral Board removed a candidate, finding: "23. The Electoral Board finds that the Candidate's statement of candidacy is false and, therefore void." This finding was based on the candidate changing her name on September 24, 1998, signing her statement of candidacy on October 21, 1998 as a "qualified voter" at 445 N. Central Avenue in Chicago and then registering to vote under her new name on December 28, 1998. The Electoral Board found that the Election Code, 5/6-54,

requires any registered voter who changes their name to register anew, citing *People ex rel. Rago v. Lapsky*, 327 Ill.App. 63, 63 N.E.2d 642 (1945). Thus, the Electoral Board found that the candidate was not a registered voter or a qualified voter at her address when she signed the statement of candidacy. They went on to find the statement of candidacy was false and therefore void. *McKennie v. Braun*, at 3,4.

Likewise, Attorney Donald was never legally registered to vote at 5200 S. Blackstone since she had been gone from Blackstone for six (6) months and moved into 54th Street (July, 2012) before she falsely registered on January 18, 2013 at Blackstone. Further, she did not register to vote from 54th Street until November 27, 2013, six (6) days after swearing to her Statement and two (2) days after filing her nomination papers. Thus, like the imposter Carol Mosely-Braun, the Candidate herein, Attorney Donald, falsely swore to the Statement of Candidacy since she was not a “qualified voter” anywhere in Illinois nor a “qualified Primary voter” anywhere in Illinois. Attorney Donald took no action pursuant to the cited sections of Article 6 of the Election Code to legally register to vote prior to signing and filing her Statement of Candidacy.

VI. MELL AND HENDERSON ARE DISTINGUISHABLE

The Candidate will cite *Henderson v. Miller*, 228 Ill.App.3d 260, 170 Ill.Dec. 134, 592 N.E.2nd 570 (1992) and *Laiacona v. Mell*, 10-EB-RGA-26, as precedent in support of her position. Both cases are easily distinguishable.

In *Henderson*, the Candidate, Jesse L. Miller, was running for Alderman of the 24th Ward in the City of Chicago. He listed his address on Troy as to where he was a qualified voter although he was registered at an address on Springfield which was also within the 24th Ward.

The court focused on the Municipal Code (Ill. Rev. Stat., Ch. 24, para. 3-4-15, 3-14-1 (1989)), holding that the act did not require the candidate to be a voter at his place of residence – but it did require the candidate to be “a qualified elector of the municipality.” *Henderson*, at 264.

Attorney Donald is a candidate for a partisan office governed by the provisions of 5/7-10 of the Election Code. Alderman Miller was a non-partisan candidate for a local municipal office governed by the Municipal Code. Attorney Donald had to swear she was a “qualified voter therein” with the “therein” referring back and repeating the address of the Candidate. Thus, the “therein” either relates back to the street address (913 E. 54th Street); the street address and city (Chicago); or the street address, city and state. In this case, although the Objectors contend “therein” relates back to include the entire address, city and state, it does not matter since the Candidate was not a qualified voter anywhere in the state.

The Objectors further contend that the Article 7 (“Making of Nominations By Political Parties”) requirements for the Statement of Candidacy differ than the Municipal Code requirements and non-partisan statements of candidacy. The General Assembly is allowed by the Constitution (Article III, Section 1) to establish registration requirements and to facilitate registration and voting by all qualified persons, as well as to pass laws as to the conduct of elections. (Article III, Section 4).

Article 7 of the Election Code not only requires a partisan candidate to swear under oath that they are qualified voters – either at their residence address, or within the election district, but it also mandates that the partisan candidate swear that they are a “qualified Primary voter” of the particular party of their choice. 10 ILCS 5/7-10. In order to be a qualified Primary voter and affiliate with the party of your choice, you must be a duly registered voter under the applicable

statute.

Candidate, Attorney Donald, was not a qualified voter or a qualified Primary voter of the Democratic Party since she was not a registered voter at the time of signing the Statement of Candidacy.

Thus, *Henderson* was a Municipal Code and Article 10 (Making of Nominations in Certain Other Cases) case concerning a non-partisan candidate who was a registered voter. *Bass v. Hamblet*, 266 Ill.App.3d 1110, 204 Ill.Dec. 55, 641 N.E.2d 204 (1994), concerned Article 8 (Nomination of Members of the General Assembly) and circulation issues. However, the circulator in question in *Bass*, was also found to be a registered voter (although Justice Rakowski dissented citing the applicable statute and *Green*, and stating that the circulator had to be a registered voter at the address she used in the circulator's affidavit).

The final case that is distinguishable from the case before the Board is the *Deborah Mell* matter. First, this is an Article 8 (General Assembly) case – not an Article 7 situation. Second, the facts are very different since there is no question Ms. Mell was registered, but was on “Inactive” status. Attorney Donald was not lawfully registered; falsely give her former address at the November, 2012 election; falsely registered from her former address in January, 2013; falsely used her former address as a signatory on the nominating petitions; and falsely swore she was a qualified voter and qualified Primary voter – when she was not. Unlike Deborah Mell – who was a registered voter within her Legislative District, Attorney Donald was not a registered or qualified voter. Unlike Ms. Mell, who was registered within her representative district, Attorney Donald was not duly registered anywhere.

Ms. Mell was eligible to vote at the preceding primary election since she was a registered

voter. However, Attorney Donald, although filling out an affidavit in order to vote at the preceding election (November, 2012), falsely swore that she lived in the Blackstone apartment when she had moved out and was living in the 54th Street apartment as of July, 2012. Thus, she was not a registered voter at the November, 2012 election.

The *Suter v. Acevedo*, 06-EB-RGA-04, case cited by the *Mell* electoral board is also different than the facts of the present case. In *Suter*, there was no question regarding the candidate being a registered voter at some address in the election district. Here, Attorney Donald was not lawfully registered anywhere in Illinois when she signed the Statement of Candidacy.

The bottom line is that Deborah Mell could legally vote and was on Inactive status. Attorney Donald could not legally vote when she signed her Statement since she was not legally registered to vote. Attorney Donald could not affiliate and be a qualified Primary voter of the Democratic Party since she was not a registered voter.

VII. CONCLUSION


In the recent case of *Cunningham v. Schaefflein and the State Officers Electoral Board*, 2012 IL App (1st) 120529 (2012), 360 Ill.Dec. 816, 969 N.E.2d 861, this Electoral Board again noted how important the circulator's statement was since it must be sworn to before some officer authorized to administer oaths. 10 ILCS 5/7-10; *Bowe v. Chicago Electoral Board*, 79 Ill.2d 469, 38 Ill.Dec. 756, 404 N.E.2d 180 (1980). "That requirement, like the rules governing the circulation of petition sheets, ensures the integrity of the circulation process, and in turn, the political process." *Cunningham*, ¶40. The Appellate Court again looked to preserve the integrity of the electoral process (¶42) in striking the candidate's sheets that had been improperly notarized.

Here, we have a licensed attorney, Candidate Donald, who executed false affidavits in attempting to be a registered voter. After swearing that she was a qualified voter and qualified Primary voter, she finally properly registered to vote – six (6) days after signing the Statement of Candidacy. A candidate's untruthful swearing rises to the highest level – above a signer, above a circulator, above a notary.

The Objectors respectfully request the Hearing Examiner recommend to the Electoral Board that the Objectors' Petition be granted as to Candidate Donald. If Candidate Donald is ordered removed from the ballot, then the Objectors' Petition should also be granted as to the candidacy of Tio Hardiman. 5/7-10 is very clear that the Governor and Lt. Governor must run together – on one petition. If one is removed, the other's candidacy is doomed for failure to comply with 5/7-10.

WHEREFORE, the Objectors respectfully request that the Objectors' Petition be granted as set forth above and the Motion to Strike and Dismiss be denied.

Respectfully submitted,

By: 
Burton S. Odelson, one of Objectors' attorneys

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STATEMENT OF CANDIDACY

NAME	ADDRESS-ZIP CODE	OFFICE	DISTRICT	PARTY
BRUNELL DONALD	913 E. 54th Street, Chicago, Illinois 60615	LIEUTENANT GOVERNOR of ILLINOIS	statewide	Democratic

If required pursuant to 10 ILCS 5/7-10.2, 8-8.1 or 10-5.1, complete the following (this information will appear on the ballot)

FORMERLY KNOWN AS _____ UNTIL NAME CHANGED ON _____
(List all names during last 3 years) (List date of each name change)

STATE OF ILLINOIS)
County of COOK) SS.

I, Brunell Donald (Name of Candidate) being first duly sworn (or affirmed), say that I reside at 913 E. 54th Street, in the City Village, Unincorporated Area (circle one) of Chicago (if unincorporated, list municipality that provides postal service) Zip Code 60615, in the County of Cook, State of Illinois; that I am a qualified voter therein and am a qualified Primary voter of the Democratic Party; that I am a candidate for Nomination/Election to the office of Lieutenant Governor of Illinois in the statewide District, to be voted upon at the primary election to be held on March 18, 2014 (date of election) and that I am legally qualified (including being the holder of any license that may be an eligibility requirement for the office to which I seek the nomination) to hold such office and that I have filed (or I will file before the close of the petition filing period) a Statement of Economic Interests as required by the Illinois Governmental Ethics Act and I hereby request that my name be printed upon the official Democratic (Name of Party) Primary ballot for Nomination/Election for such office.

Brunell Donald
(Signature of Candidate)

Signed and sworn to (or affirmed) by Brunell Donald before me, on 11/21/13
(Name of Candidate) (insert month, day, year)

(SEAL)
OFFICIAL SEAL
RANDY CRUMPTON
NOTARY PUBLIC, STATE OF ILLINOIS
MY COMMISSION EXPIRES 3-12-17

Randy Crumpton
(Notary Public's Signature)
STATE BOARD OF ELECTIONS
Springfield, Illinois
FILED Nov. 25, 2013 9:00 AM

DEMOCRATIC PRIMARY PETITION

We, the undersigned, members of and affiliated with the DEMOCRATIC Party and qualified primary electors of the DEMOCRATIC Party, in the State of Illinois, do hereby petition that the following named persons shall be candidates of the DEMOCRATIC Party for the nomination for the offices hereinafter specified, to be voted for at the primary election to be held on the Eighteenth (18th) day of March, 2014.

NAME	ADDRESS	OFFICE	DISTRICT	PARTY
Tio Hardiman	233 N. IRVING AVENUE HILLSIDE, ILLINOIS 60162	GOVERNOR	STATE OF ILLINOIS	DEMOCRATIC
Brunell Donald	913 East 54th STREET CHICAGO, ILLINOIS 60615	LIEUTENANT GOVERNOR	STATE OF ILLINOIS	DEMOCRATIC

NAME (voter's signature)	PRINT NAME	STREET ADDRESS OR RR NUMBER	CITY, TOWN OR VILLAGE	COUNTY
TH Tiffany P. Riley	TIFFANY P. RILEY	2215 S. Springfield	COOK	CHGO
Sharon Jones	SHARON JONES	1630 N. Normandy	COOK	CHGO
TH Edie Turner	EDIE TURNER	2910 S. Dearborn	COOK	CHGO
Edie Turner	EDIE TURNER	4424 S. Drexel	COOK	CHGO
Henry E. Petties	HENRY E. PETTIES	6537 S. University	COOK	CHGO
Michelle Howard	MICHELLE HOWARD	7102 S. Emerald Ave	CHGO	COOK
TH Star A	STAR A	1208 LORELEI	CHGO	COOK
Brunell Donald	Brunell Donald	913 E. 54th	CHGO	COOK
Karla Shaw	Karla Shaw	6527 S. Drexel Ave	CHGO	COOK
10				
11				
12				
13				
14				
15				
16				
17				
18				
19				
20				
21				
22				
23				
24				
25				

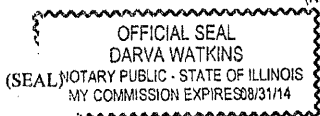
STATE OF ILLINOIS,) ss.
COUNTY OF COOK

I, Tio Hardiman, do hereby certify that I reside at 233 N. Irving Ave
(Print Name of Circulator) (Address)
in the City/Village/Unincorporated Area (circle one) of Hillside, ZIP Code 60162, County of Cook.
(If unincorporated, list municipality that provides postal service)

State of Illinois, that I am 18 years of age or older, that I am a citizen of the United States, and that the signatures on this sheet were signed in my presence, not more than 90 days preceding the last day for filing of the petitions and are genuine and that to the best of my knowledge and belief the persons so signing were at the time of signing the petition qualified voters of the DEMOCRATIC Party in the political division in which the candidates are seeking nomination, and that their respective residences are correctly stated as above set forth.

(Signature of Circulator)

Signed and sworn to (or affirmed) by Tio Hardiman before me, on 10/5, 2013
(Name of Circulator) (Insert month, day)



SHEET NO. 237

EX A

Commissioners

LANGDON D. NEAL
Chairman
 RICHARD A. COWEN
Secretary
 MARISEL A. HERNANDEZ



69 WEST WASHINGTON STREET
 CHICAGO, ILLINOIS 60602
 (312) 269-7900

LANCE GOUGH
Executive Director

FIELD NAME:	OLD VALUE	NEW VALUE	DATE
Changes for 92124FC -- BRUNELL L DONALD			
reason_id	L	N	6/ 9/1999
house_num	10522	921	6/ 5/2000
reason_id	N	U	6/ 5/2000
street_name	EBERHART	LAWNDALE	6/ 5/2000
apt_num		204	6/ 5/2000
voter_status	A	I	11/ 6/2005
voter_status2		C	11/ 6/2005
reason_id	U	B	11/ 6/2005
sufx	AV	ST	5/ 5/2008
house_num	921	3145	5/ 5/2008
street_name	LAWNDALE	FLOURNOY	5/ 5/2008
apt_num	204		5/ 5/2008
street_dir	S	W	5/ 5/2008
voter_status	I	A	5/ 5/2008
reason_id	5	F	5/ 5/2008
voter_status2	C		5/ 5/2008
voter_status	A	I	6/16/2008
voter_status2		C	6/16/2008
reason_id	F	A	6/16/2008
voter_status	I	A	12/12/2008
reason_id	A	P	12/12/2008
voter_status2	C		12/12/2008
voter_status	A	I	10/14/2009
voter_status2		C	10/14/2009
reason_id	P	*	10/14/2009
sufx	ST	AV	1/18/2013
house_num	3145	5200	1/18/2013
street_name	FLOURNOY	BLACKSTONE	1/18/2013
street_dir	W	S	1/18/2013
voter_status	I	A	1/18/2013
reason_id	*	J	1/18/2013
voter_status2	C		1/18/2013
sufx	AV	ST	11/27/2013
house_num	5200	913	11/27/2013
street_name	BLACKSTONE	54	11/27/2013
street_dir	S	E	11/27/2013
reason_id	J	U	11/27/2013

Obj Group Ex. A-4

Watermark Workspace - [Read Only]

PRINT CLEARLY

CA 92124FC 1/18/13

1. Last Name Donald	First Name Brunell	Middle DJS
2. Street Address 5200 S. Blackstone	Apt or Unit #	Zip Code 6065
3. Date of Birth (month/day/year) 8/5/1975	4. Sex M	5. Telephone # 773-577-9790
6. IL Driver's License # D54307275822	OR IL State ID.#	OR SS# (Last 4 digits)

I affirm that I: am a citizen of the United States; am 18 years of age or older; have resided in this State and in this precinct for 30 days preceding this election; have not voted in this election; am a duly registered voter in every respect; and am eligible to vote in this election.

Brunell
Signature of Voter (must include signature)

BOARD OF ELECTION COMMISSIONERS ORIGINAL

NOV 06 2012

start

Obj. Group Ex A - 6

2. If you checked "no" in response to either of these questions, then do not complete this form.				7A 921247	
3. You can use this form to: (Check One) <input type="checkbox"/> apply to register to vote in Illinois <input checked="" type="checkbox"/> change your address <input type="checkbox"/> change your name					
4. Last Name First Name Middle Name or Initial Suffix (Circle One) Jr. Sr. II III IV					
Donald Brunell					
5. Address where you live (House No., Street Name, Apt. No.) City/Village/Town Zip Code County Township					
913 E. 54th Chicago IL 60615 Cook					
6. Mailing address (P.O. Box) City/Village/Town, State Zip Code					
5200 S. Blackstone #1007 Cook 60615					
7. Former Registration Address (include City and State and Zip Code) Former County 8. Former Name (if changed)					
9. Date of Birth MM/DD/YY 10. Home telephone number including area code (optional) 11. ID number - check the applicable box and provide the appropriate number					
8/5/1975		(773) 577-9799		<input checked="" type="checkbox"/> IL Driver's License or, if none, Sec. of State identification or <input type="checkbox"/> Last 4 digits of Social Security Number <input type="checkbox"/> I have none of the above-listed identification numbers.	
12. Sex (circle one) M 6		35430 1275 822			
13. Voter Affidavit - Read all statements and sign within the box to the right.					
I swear or affirm that: • I am a citizen of the United States; • I will be at least 18 years old on or before the next election; • I will have lived in the State of Illinois and in my election precinct at least 30 days as of the date of the next election; • The information I have provided is true to the best of my knowledge under penalty of perjury. If I have provided false information, then I may be fined, imprisoned, or if I am not a U.S. citizen, deported from or refused entry into the United States.				This is my signature or mark in the space below	
				<div style="border: 1px solid black; height: 60px; width: 100%; position: relative;"> <div style="position: absolute; top: 10px; right: 10px; font-family: cursive; font-size: 1.2em;">Brunell Donald</div> </div>	
Today's Date: _____ / _____ / _____					
14. If you cannot sign your name, ask the person who helped you fill in this form to print their name, address and telephone number					
Name of person assisting		Full Address		Telephone No.	

NOV 27 2013

Obj Group 2A-3

Commissioners

LANGDON D. NEAL

Chairman

RICHARD A. COWEN

Secretary

MARISEL A. HERNANDEZ

LANCE GOUGH

Executive Director



69 WEST WASHINGTON STREET

CHICAGO, ILLINOIS 60602

(312) 269-7900

FAX (312) 263-3649

TTY (312) 269-0027

WWW.CHICAGOELECTIONS.COM

E-mail Address: CBOE@CHICAGOELECTIONS.COM

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

I, Lance Gough, Executive Director of the Board of Election Commissioners in the County and State aforesaid and keeper of the records and files of said Board, do hereby certify that the following named person is a registered voter. This individual is currently registered at the address indicated below;

NAME: BRUNELL L DONALD

ADDRESS: 913 E 54 ST
 CHICAGO, ILLINOIS 60615

REGISTRATION NO: 92124FC

and that a copy of the original registration card and voter change information (if any) is attached

all of which appears from the records and files of said Board.

IN WITNESS WHEREOF, I have hereunto set my
hand and affixed the Seal of said Board at
my office in the City of Chicago, this
27th day of November A. D. 2013

LANCE GOUGH
Executive Director

Obj. Group Ex A - 2



Board of Election Commissioners for the City of Chicago

Commissioners

Langdon D. Neal, Chairman
Richard A. Cowen, Secretary/Commissioner
Marisel A. Hernandez, Commissioner

Lance Gough, Executive Director
Kelly Bateman, Asst. Executive Director

English Español Polski 中文 हिंदी

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Your Voter Information

Your voter information is a lookup tool which provides several pieces of key information unique to you. You may:

- Verify your voter registration
- Locate your polling place
- Obtain a sample ballot
- Find contact information for your public officials

Voter Status/
Polling Place

Public Officials

Voter Status/ Polling Place

Ward 5 & Precinct 15

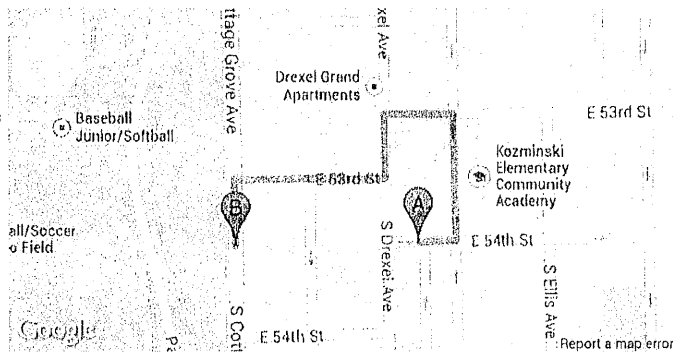
Polling Place Information

Hyde Park West Apartments
5325 S Cottage Grove

This polling place is fully accessible to voters with disabilities.

District Information

United States Congress	1
State Senate	13
Rep. In General Assembly	26
Judicial Sub-Circuit	5
County Board	3
Board of Review	3



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Board of Election Commissioners for the City of Chicago

Commissioners

Langdon D. Neal, Chairman
Richard A. Cowen, Secretary/Commissioner
Marisel A. Hernandez, Commissioner
Lance Gough, Executive Director
Kelly Bateman, Asst. Executive Director

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[Election Results](#)
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Your Voter Information

Your voter information is a lookup tool which provides several pieces of key information unique to you. You may:

- Verify your voter registration
- Locate your polling place
- Obtain a sample ballot
- Find contact information for your public officials

913 E. 54th St

Voter Status/ Polling Place	Public Officials												
<h4>Voter Status/ Polling Place</h4> <p>Ward & Precinct Ward 4 & Precinct 27</p> <p>Polling Place Information United Church Of Hyde Park 1448 E 53 St</p> <p>This polling place is fully accessible to voters with disabilities.</p> <p>District Information</p> <table border="1"> <tbody> <tr> <td>United States Congress</td> <td>1</td> </tr> <tr> <td>State Senate</td> <td>13</td> </tr> <tr> <td>Rep. In General Assembly</td> <td>25</td> </tr> <tr> <td>Judicial Sub-Circuit</td> <td>5</td> </tr> <tr> <td>County Board</td> <td>3</td> </tr> <tr> <td>Board of Review</td> <td>3</td> </tr> </tbody> </table>		United States Congress	1	State Senate	13	Rep. In General Assembly	25	Judicial Sub-Circuit	5	County Board	3	Board of Review	3
United States Congress	1												
State Senate	13												
Rep. In General Assembly	25												
Judicial Sub-Circuit	5												
County Board	3												
Board of Review	3												

[Click here to search again.](#)

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, et. al.,)	
)	
Objector,)	
)	
v.)	No. 13 SOEB GP 511
)	
TIO HARDIMAN, et. al.,)	
)	
Candidate.)	

RESPONSE TO MEMORANDUM IN SUPPORT OF OBJECTORS' PETITION

NOW COMES the Candidate, by attorney, Randy Crumpton, and in response to the Memorandum in Support of Objectors' Petition, state as follows:

I. BRUNELL DONALD'S STATEMENT OF CANDIDACY IS ACCURATE

Attorney Brunell Donald's (DONALD) Statement of Candidacy is accurate because she is a qualified primary voter of the Democratic Party residing in the state of Illinois. DONALD filed her Illinois Voter Registration Application with the office of the County Clerk on April 14, 1999 and from that time on she has been a qualified voter in the state of Illinois. See Objector's Group Exhibit A-5.

According to DONALD's registration history on May 5, 2008 she was registered to vote at 3145 W. Flournoy Street, Chicago, Illinois. See Objector's Group Exhibit A-4. On July 1, 2010, DONALD was living at 5200 S. Blackstone, Apt. 1007, Chicago, Illinois. See Candidate's Exhibit 3. DONALD testified before the Hearing Officer that she moved to 913 E. 54th Street, Chicago, Illinois in July 2012.

DONALD realized during the Presidential Election on November 6, 2012, that she wanted to vote for President Barack Obama, however, discovered when she went to vote at the

precinct in the 4th Ward, 27th Precinct at the polling location at 5480 S. Kenwood, Chicago, Illinois, which is the ward and precinct for her current residence that they did not have her listed in that precinct. See DONALD's Affidavit attached to this Response to Memorandum In Support of Objectors' Petition. She was given an application for a provisional ballot. See Objector's Exhibit A-6. DONALD testified that she filled out the application and that she listed 5200 S. Blackstone as her address because she thought that was the last residence she was registered. She never affirmed or certified that 5200 S. Blackstone was her current address, nor did she ask for her voter registration to be changed to that address.

The language at the bottom of the provisional ballot application read as follows:

I affirm that I am a citizen of the United States, am 18 years of age or older, have resided in the United States and in this precinct for 30 days preceding this election, have not voted in this election, am a duly registered voter in every respect; and **am eligible to vote in this election.**

In *Lyons v. Kulwin*, 00-EB-RES-002, a case where the objector challenged the candidate's residency eligibility based on the fact that the candidate in the 1998 General Election listed a former residence on a ballot application as evidence that he was not qualified. The Chicago Board of Elections upheld the Hearing Officer's decision who found that "the Candidate testified that he did not certify that ...was his current address when he signed the application for ballot on November 3, 1998; rather simply intended to certify that he was a registered voter who was eligible to vote. The Candidate further testified that although he had moved from he wanted to vote but he had not taken steps to re-register at his new address. Just like the *Lyons* case the application for the provisional ballot does not require the person to certify that address given is their current address. Thus, the affidavit was not false.

Further, DONALD believed that the application was for the November 2012 election only. She had no idea that the Board of Election employees would change her registration to 5200 S. Blackstone. She did not change of voter registration on January 18, 2013, nor did she file a change of address to that address. The Objectors have presented no evidence that DONALD made such a request. They have attached the change of address card that she filed on November 27, 2013, but not one for January 18, 2013, because there is not one for January 18, 2013. However, if you take a close look at the application for the provisional ballot you can see that perhaps someone at the Chicago Board of Elections changed the address to 5200 S. Blackstone. See in the upper right hand corner of the application for the provisional ballot the markings, "CA 921241C 1/18/13" followed by some initials. January 18, 2013, is the date that DONALD'S registration was changed to 5200 S. Blackstone. She never certified that 5200 S. Blackstone was her current address. See Objectors' Group Exhibit A-6.

DONALD was simply trying to vote in the 2012 General Election and forgot where she was registered to vote. On November 6, 2012 she was a registered at 3145 W. Flourney Street. She was allowed to vote in her current precinct with a provisional ballot, which is probably why she forgot to change her registration until November 27, 2013. This case is similar to *Caldwell v. Morrow*, 88 EB REP 23, where the Candidate was not a registered voter at all, but the Board found "that the Candidate swore in his Statement of Candidacy that he was a qualified primary voter and the Election judges allowed him to vote uncontested in every election since his father's death treating him as a registered voter. The Board of Election Commissioners also treated the Candidate as a registered voter as evidenced by the Board's precinct sheets and alpha listing. The Board and the Election Judges treated and led the Candidate to believe that he was, and still

is, a registered voter.”

When it comes to the “integrity” cases, such as *Huskey v. Municipal Officers Electoral Board of Oak Lawn*, 156 Ill.App.3d 201 (1987), 509 N.E.2d 555, 108 Ill.Dec. 859. In *Huskey*, the circulators engaged in a pattern of fraud that included false affidavits. Petitioner signers testified that certain circulators had not asked them to sign the sheets. Others had not signed at all and someone else had forged their signatures. The circulators testified that they had not circulated sheets that they had signed affidavits swearing that the persons had signed in their presence. By far, the present case would not fall into this category of cases.

DONALD did nothing wrong other than forget was she was last registered to vote when she filled out her application for a provisional ballot. She did not certify that she lived at 5200 S. Blackstone, nor did she request her registration be changed to that address. Thus, since 1999, DONALD has been and still is a qualified voter in the state of Illinois.

Moreover, it is well settled law in Illinois that a candidate’s statement that he resides at a certain address in the district and that he is a qualified voter therein is not false and perjurious because there is no statute that requires that a candidate be a voter at his place of residence.

See *Brown v. Ivory*, 95 EB ALD 106 and 95 EB ALD 129. *Laiucona v. Mell*, 10 EB RGA 26. *Summers v. Walker*, 11 EB ALD 067, and *Henderson v. Miller*, 228 Ill.App.3d 260, 592 N.E.2d 570 (1st Dist. 1992).

This case is like the *Mell* and *Henderson* cases. DONALD was a qualified voter and a qualified primary voter of the Democratic Party at the time she signed her Statement of Candidacy on November 21, 2013. No different than Deborah Mell.

Finally, DONALD did sign petition sheet 237, line 8, however she did not write “5200 E.

Blackstone” above her address of “913 E. 54th”. See DONALD’s Affidavit attached to this Response to Memorandum In Support of Objectors’ Petition. Even the street direction is incorrect. DONALD has no idea where those markings came from, but they were not from her.

II. A LAW REQUIRING DONALD TO BE REGISTERED VOTER IS UNCONSTITUTIONAL

DONALD is a qualified voter and registered voter since 1999. However, even if she was not registered voter, any law requiring candidates to be registered voters could not constitutionally be enforced against candidates for Lieutenant Governor because only the qualifications for such office are those set forth in the Illinois Constitution and the legislature may not impose any additional eligibility requirements for that office.

The eligibility requirements to hold the office of Lieutenant Governor are set out in Article V, Section 3 of the Illinois Constitution. It reads that to be eligible a to hold such office a candidate must be “a United States citizen, at least 25 years old, and a resident of this State for the three years preceding his election.” The Objector does not object to DONALD’S candidacy on none the basis set forth in the Constitution.

It is clear that if the writers of the Constitution wanted the Illinois General Assembly to have the power to change those qualifications, they could have done so. See Article V, Section 4, the clause on joint election. The last sentence reads, “the General Assembly may provide by law for the joint nomination of candidates for Governor and Lieutenant Governor.” The General Assembly exercised that power recently.

However, no where in the Constitution does it give the General Assembly any power to change the eligibility requirements for Lieutenant Governor candidates. And being a registered

voter is not one of them. While the General Assembly has the power to regulate the electoral process and ensure safe and fair elections, that power does not extend to modifying the eligibility requirements to be a qualified candidate for Lieutenant Governor.


III. CONCLUSION

DONALD was a qualified voter when she signed her Statement of Candidacy on November 21, 2013. On November 6, 2012, she only sought to vote in the Presidential Election by a provisional ballot and her application for such provisional ballot has nothing to do with her continuous registration since April 1999 in the state of Illinois. She never certified that 5200 S. Blackstone was her current residence, nor did she sign anything to affirmatively ask the Board of Election employees to change her registration address on January 18, 2013.

In any event, the General Assembly does not have the power to change or add to the qualifications needed to be a candidate for the office of Lieutenant Governor.

Wherefore, the Candidates respectfully request that their Motion to Strike and Dismiss be granted.

Respectfully submitted,


Randy Crumpton

Randy Crumpton
70 West Madison, Suite 1400
Chicago, Illinois 60602
Phone: (312) 214-3327
Fax: (312) 214-3341
rancrump@aol.com

92124FC

ILLINOIS VOTER REGISTRATION APPLICATION

1. Applicant Name (Last, First, Middle)

DONALD, BRUNELL, L

2. Voting Address (Address, City, ZIP)

10522 S EBERHART
CHICAGO, 60628

County

COOK

Township

3. Previous Registration (Address, City, State, ZIP)

County

Previous Name

4. Date of Birth

08-05-75

5. Sex

F

6. Telephone Number

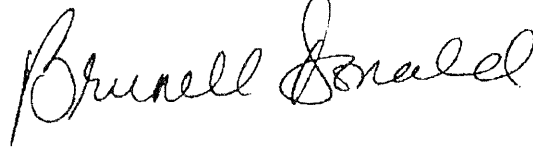
773-277-0847

7. Application ID

3011999041400257689

8. Voter Affidavit:
- I swear or affirm that I am a citizen of the United States.
 - I will be at least 18 years old on or before the next election.
 - I will have lived in the State of Illinois and in my election precinct 30 days as of the date of the next election.
 - All of the information contained on this application is true. I understand that if it is not true I can be convicted of perjury and fined up to \$5,000 and/or jailed for 2-5 years.

THIS IS MY SIGNATURE OR MARK IN THE SPACE BELOW:



Date:

4/14/99

APR 22 1999

OFFICE OF THE COUNTY
CLERK
118 N CLARK
RM 402
CHICAGO 60602

Object Group Ex A-5

Commissioners

LANGDON D. NEAL

Chairman

RICHARD A. COWEN

Secretary

MARISEL A. HERNANDEZ



69 WEST WASHINGTON STREET
CHICAGO, ILLINOIS 60602
(312) 269-7900

LANCE GOUGH
Executive Director

FIELD NAME:	OLD VALUE	NEW VALUE	DATE
Changes for 92124FC -- BRUNELL L DONALD			
reason_id	L	N	6/ 9/1999
house_num	10522	921	6/ 5/2000
reason_id	N	U	6/ 5/2000
street_name	EBERHART	LAWNDALE	6/ 5/2000
apt_num		204	6/ 5/2000
voter_status	A	I	11/ 6/2005
voter_status2		C	11/ 6/2005
reason_id	U	B	11/ 6/2005
sufx	AV	ST	5/ 5/2008
house_num	921	3145	5/ 5/2008
street_name	LAWNDALE	FLOURNOY	5/ 5/2008
apt_num	204		5/ 5/2008
street_dir	S	W	5/ 5/2008
voter_status	I	A	5/ 5/2008
reason_id	S	F	5/ 5/2008
voter_status2	C		5/ 5/2008
voter_status	A	I	6/16/2008
voter_status2		C	6/16/2008
reason_id	F	A	6/16/2008
voter_status	I	A	12/12/2008
reason_id	A	P	12/12/2008
voter_status2	C		12/12/2008
voter_status	A	I	10/14/2009
voter_status2		C	10/14/2009
reason_id	P	*	10/14/2009
sufx	ST	AV	1/18/2013
house_num	3145	5200	1/18/2013
street_name	FLOURNOY	BLACKSTONE	1/18/2013
street_dir	W	S	1/18/2013
voter_status	I	A	1/18/2013
reason_id	*	J	1/18/2013
voter_status2	C		1/18/2013
sufx	AV	ST	11/27/2013
house_num	5200	913	11/27/2013
street_name	BLACKSTONE	54	11/27/2013
street_dir	S	E	11/27/2013
reason_id	J	U	11/27/2013

Obj Group Ex. A-4

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR
THE HEARING AND PASSING UPON OF OBJECTIONS**

AFFIDAVIT

I, Brunell Donald, being first duly sworn, state the following:

1. I reside at 913 E. 54th Street, Chicago, Illinois 60615. My residence is located in the 4th Ward Precinct 27.
2. I voted by provisional ballot in the 4th Ward Precinct 27 Hyde Park Gym located at 5840 S. Kenwood on November 6, 2012.
3. On petition sheet 237 line # 8 I did not write 5200 E. Blackstone above my living address of 913 E. 54th Street. I formerly lived at 5200 S. Blackstone not East.
4. I did not request or approve any change of address on November 6, 2012 to 5200 S. Blackstone.
5. I did not request or approve any change of address from 3145 W. Flournoy to 5200 S. Blackstone on January 18, 2013. My handwriting, signature, nor my initials appear on the top right hand side of my provisional ballot..
6. If called upon, I will so testify.

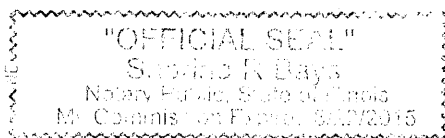
FURTHER AFFIANT SAYETH NOT.

Brunell Donald
Signature of Affiant

1/8/2014
Date

Subscribed and sworn to before me this
8th day of January, 2014

Shirley R. Days
Notary Public





MAC PROPERTY MANAGEMENT

CHICAGO RESIDENT SERVICES

1352 East 53rd Street Chicago, Illinois 60615

TEL 773 548 5077 FAX 773 358 3501 WEB www.macapartments.com

January 2, 2013

Re: Residency of Brunell Donald

Illinois State Board of Elections

100 W. Randolph

Room 14-100

Chicago, Illinois

Dear Illinois State Board of Elections:

This letter confirms that Brunell Donald resided at 913 E. 54th Street on November 21, 2013. Prior to Brunell Donald living at 913 E. 54th Street she lived at another property owned by Mac Property at 5200 S. Blackstone, Apt. 1007 Chicago, Illinois 60615. Brunell Donald has been a tenant with Mac Property since July 1, 2010.

If you have any questions please call me at 773 548 5077.

Sincerely,

Dan Springer

Resident Services Manager

Mac Property Management

1352 E. 53rd Street

Chicago, IL 60615

(773) 548-5077 ext. 3517

dspringer@macapartments.com

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, et. al.,)	
)	
Objector,)	
)	
v.)	No. 13 SOEB GP 511
)	
TIO HARDIMAN, et. al.,)	
)	
Candidate.)	

**RESPONSE TO OBJECTORS' REPLY TO RESPONSE MEMORANDUM
IN SUPPORT OF OBJECTORS' PETITION**

NOW COMES the Candidate, by attorney, Randy Crumpton, and in response to the Memorandum in Support of Objectors' Petition, state as follows:

1. Objectors filed their Memorandum at 4:50 p.m. on January 6, 2014; included in that filing was Petition Sheet 237 and 2 additional documents from the Board of Election of Commissioners for the City of Chicago website regarding the precincts and polling places, which were not addressed during the hearing.
2. DONALD's affidavit addresses those documents.
3. This case is different from *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill.App.3d 694, 309 Ill.Dec. 163, 863 N.E.2d 795 (2007). In *Neely*, the candidate signed an affidavit with the following language above his signature, "I hereby certify that I am registered from the address above and am qualified to vote." The candidate certified that he was registered from the address above his name. DONALD made no such certification on provisional ballot application.
4. There was no testimony from DONALD about where she voted. Nor does the application indicate the polling place in which ward and precinct it was taken. The Objectors

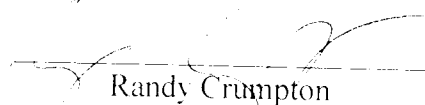
wrongfully assume and argued in the Memorandum that DONALD voted in the precinct of the Blackstone address. That was not the case as explained by DONALD in her affidavit. There is no evidence that DONALD voted at the polling place of the 5th Ward, 15th Precinct. None. Because she voted by provisional ballot at the polling place for the precinct of her current residence. The affidavit is consistent with DONALD's testimony at the hearing.

5. Objectors keep arguing that DONALD falsely registered in January 2013, but where is their evidence? Where is the change of registration or application. DONALD's argument regarding change in her voting address that she never requested is more plausible.

6. Objectors' argument is weak. They want the Hearing Officer to make too many assumptions and infer too much information to disqualify a candidate is qualified to be on the ballot and did not falsify her Statement of Candidacy.

Wherefore, the Candidates respectfully request that their Motion to Strike and Dismiss be granted.

Respectfully submitted,



Randy Crumpton

Randy Crumpton
70 West Madison, Suite 1400
Chicago, Illinois 60602
Phone: (312) 214-3327
Fax: (312) 214-3341
rancrump@aol.com

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD FOR
THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, et. al.,

Objector,

v.

TIO HARDIMAN, et. al.,

Candidate.

No. 13 SOEB GP 511

NOTICE OF FILING

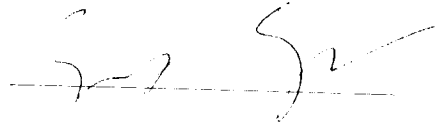
To: State Officers Electoral Board
c/o Steve Sandvoss
100 W. Randolph St., 14-100
Ssandvoss@elections.il.gov

Barbara Goodman

barb@barbgoodmanlaw.com

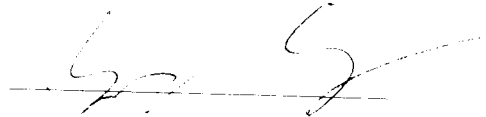
Burton S. Odelson
3318 W. 95th Street
Evergreen Park, IL
attyburt@aol.com

Please take notice that on January 9, 2014, I filed the attached Response to Objector's Reply to Response to Memorandum In Support of Objectors' Petition with the State Officers Electoral Board.



CERTIFICATE FOR SERVICE

The undersigned attorney hereby certifies that copies of the attached Response to Objector's Reply to Response to Memorandum In Support of Objectors' Petition were served upon the above-referenced party(ies) at the address indicated by the facsimile transmission, mail or in person on January 9, 2014.



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312-214-3341 Fax
rancrump@aol.com

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)	
and LING-YI MARGOT WANG,)	
)	
Petitioners-Objectors,)	
)	
v.)	No. 13 SOEB GP 511
)	
TIO HARDIMAN and BRUNELL DONALD,)	
)	
Respondents-Candidates.)	

**REPLY TO RESPONSE TO MEMORANDUM
IN SUPPORT OF OBJECTORS' PETITION**

NOW COME the Petitioners-Objectors, Michelle Wharton, Brenda F. Smith and Ling-Yi Margot Wang ("Objectors"), by and through their attorneys, Burton S. Odelson of Odelson & Sterk, Ltd. and James P. Nally, P.C., and in Reply to Candidate's Response to Memorandum in Support of Objectors' Petition pertaining to Candidate Brunell Donald's false Statement of Candidacy and the invalidation of the nomination petitions of Candidates Tio Hardiman and Brunell Donald, state as follows:

1. Candidate filed her Response at 4:56 p.m. on January 8, 2014; included in that filing was an Affidavit that was not submitted at the hearing in this cause.
2. As a result of this "new" filing, the Objectors' submit this Reply.
3. The case of *Neely v. Board of Election Commissioners for the City of Chicago*, 371 Ill.App.3d 694, 309 Ill.Dec. 163, 863 N.E.2d 795 (2007), is instructive on the issue of affidavits attempting to rebut a candidate's own certification of residence on the public record. The *Neely* case is quite clear that if the candidate asserts their residence to vote or be registered at one address, they cannot provide affidavits to dispute the public record. Even though Mr.

Neely produced evidence to show he lived within the Ward he wished to be a candidate in, the Court held he cannot “...renounce a public record he created of his residence as part of an effort to establish eligibility for public office....” *Neely*, at 698. The *Neely* court went on to quote out of state cases, in particular, *McClelland v. Sharp*, 430 S.W.2d 518 (Tex. Civ. App. 1968). As in the case before the Board, disqualification is “particularity...true where the public records showing the disqualification of the relator are based on his own actual or implied representations as to his residence at the time in question.” *McClelland*, at 520-22.

4. As the facts present themselves in this cause, in *Neely*, the Board did not require any voting registration at all. “But because *Neely* had registered, the Board looked to the public record of his registration, and particularly to the exercise of the power to vote in the 8th Ward in March, 2006, as a deliberate assertion of residence in that ward.” *Neely*, at 700.

5. The record shows that Attorney Donald made the deliberate assertion of residence at Blackstone on November 6, 2012 in order to vote knowing full-well she had moved with her husband and three children from that location in July, 2012. Thus, she did not live in that precinct thirty (30) days prior to the election. Her affirmation was false. She was not a qualified voter. She was not a qualified Primary voter at Blackstone or 54th Street.

6. After she falsely registered in January, 2013 from the Blackstone address, she did not legally register at her residence on 54th Street until November 27, 2013. She was not a legal registered voter in November, 2012; in January, 2013; on November 21, 2013, when she falsely swore in her Statement of Candidacy; but only became a qualified voter and a qualified Primary voter on November 27, 2013.

7. Further authority is found in *Juarez v. Flores*, 98-EB-RGA-06 (par. 16a), as well

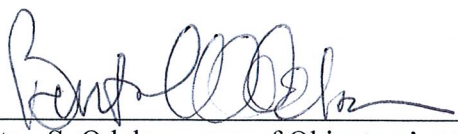
as in *Nixon v. Slagle*, 885 S.W.2d 658 (1994).

8. The Candidate violated the provision of 10 ILCS 5/18A-2, which governs provisional voting, by claiming to be a registered voter at 5200 S. Blackstone when she knew she had moved four (4) months prior. A simple reading of Objectors' Exhibit 4 shows the status of the Candidate who was not legally registered to vote anywhere since living on Flourney in May, 2008. The Objectors did not attack the Candidate's qualifications for office but did attack the fact that the Candidate filed a false Statement of Candidacy and thus, did not qualify pursuant to the Illinois Election Code.

9. The defense of the Candidate, found on page 3 of the Response, is totally unbelievable. To allege that Attorney Donald "forgot where she was registered to vote" merits no response.

WHEREFORE, the Objectors respectfully request that the Objectors' Petition be granted as set forth above and the Motion to Strike and Dismiss be denied.

Respectfully submitted,

By: 
Burton S. Odelson, one of Objectors' attorneys

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**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF OBJECTIONS**

MICHELLE WHARTON, BRENDA F. SMITH,)
and LING-YI MARGOT WANG,)

Petitioners-Objectors,)

v.)

TIO HARDIMAN and BRUNELL DONALD,)

Respondents-Candidates.)

No. **13 SOEB GP 511**

NOTICE OF FILING

TO: State Officers Electoral Board
c/o Steve Sandvoss
100 W. Randolph Street, 14-100
Chicago, IL 60601
SSandvoss@elections.il.gov

Randy Crumpton
Attorney for Respondents-Candidates
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Chicago, IL 60602
rancrump@aol.com

Barbara Goodman
Hearing Officer
barb@barbgoodmanlaw.com

PLEASE TAKE NOTICE that on January 9, 2014, the undersigned caused to be filed with the State Officers Electoral Board a **REPLY TO RESPONSE TO MEMORANDUM IN SUPPORT OF OBJECTORS' PETITION**, a copy of which is attached hereto and herewith served upon you.

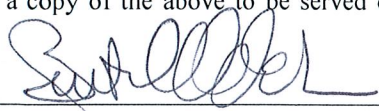
By: 
Burton S. Odelson

Burton S. Odelson
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PROOF OF SERVICE

I, Burton S. Odelson, an attorney, hereby certify that I caused a copy of the above to be served on the aforementioned parties via e-mail on January 9, 2014.


Burton S. Odelson

Gray v. Madonia
13 SOEB GP 102

Candidate: John "Mo" Madonia

Office: Circuit Court Judge, 7th Circuit, Zappa vacancy

Party: Republican

Objector: Kent Gray Jr.

Attorney For Objector: Pro Se

Attorney For Candidate: John Fogarty

Number of Signatures Required: N/A

Number of Signatures Submitted: N/A

Number of Signatures Objected to: N/A

Basis of Objection: 1. Candidate's address, as listed on the Statement of Candidacy and nominating petitions is not within the corporate boundary of the city that is listed on those documents as the city of Candidate's residence. 2. Candidate's nominating petitions do not indicate what county he resides in. 3. On numerous petition pages, the Candidate/Circulator's address is not within the corporate boundary of the city that's listed as the Circulator's city of residence on the circulator affidavit. 4. Candidate's Statement of Candidacy fails to identify the judicial vacancy he is seeking. 5. Candidate's Statement of Economic Interest fails to identify the judicial vacancy he is seeking. 6. Candidate's nominating petitions designate the vacancy sought as that of "Leo J. Zappa", whereas the Chief Justice of the Illinois Supreme Ct. certified the vacancy as "Leo J. Zappa, Jr.". 7. Candidate's Statement of Candidacy and nominating petitions identify the district of the judicial vacancy being sought differently, in that the Statement of Candidacy refers to it as the "7th Judicial District" and the nominating petitions list it as the "7th Judicial Circuit." 8. Candidate has filed multiple nominating petition pages describing the office sought in the heading as both "Circuit Court Judge" and "Circuit Judge" instead of "Judge of the Circuit Court." 9. Candidate has filed nominating petition pages of differing sizes so that the petition is not uniform. 10. Candidate has filed multiple nominating petition pages which fail to indicate whether he lives in a city, village or unincorporated area. 11. Candidate has filed multiple nominating petition pages which fail to include a statement indicating whether he has changed his name during the past three years. 12. Candidate's Statement of Candidacy includes a statement related to name change but fails to provide the information required by statute, or a statement indicating that this requirement is inapplicable to the Candidate. 13. Candidate has filed a Statement of Candidacy that fails to indicate that he is a candidate for nomination to the office specified. 14. Candidate has filed a Statement of Candidacy that fails to indicate that he requests that his name be printed upon the ballot for nomination to the office sought. 15. Candidate has made false statements on both his Statement of Candidacy and his nominating petitions by stating that he resides in Springfield when he legally resides in Leland Grove. 16. Candidate's nominating petition demonstrates a pattern of fraud and false swearing with respect to his city of residence on 4 of the 112 petition pages submitted by him.

Dispositive Motions: Candidate: Motion to Strike and Dismiss; Candidate's Reply in Support of the Motion to Strike and Dismiss. Objector: Objector's Response to Candidate's Motion to Strike and Dismiss; Objector's Brief.

Binder Check Necessary: No

Hearing Officer: David Herman

Hearing Officer Findings and Recommendation:

The Hearing Officer considered the Candidate's Motion to Strike and Dismiss the Objection, specifically the challenge to the Objector's characterization of his address. The recommendation is to deny the Motion, essentially for the same reason that he recommends denying the Objector's objections to the Candidate's characterization of his residence address. He notes that the purpose of the requirement in Section 10-8 to specify the address goes to affirming that the objector resides in the applicable political division. In this case, there is no dispute that the Objector resides in Leland Grove, even though his mailing address and voter registration show his city as Springfield. Thus clearly the Objector has satisfied the residency requirement set forth in Section 10-8 for objectors.

The Hearing Officer also considered the Objector's submission of additional evidence following the evidentiary hearing. The Objector claimed that such evidence was not available at the time of the hearing, that it was relevant to the issue of the Candidate's address and was in compliance with the Hearing Officer's request for supplementation of the record and was within the scope of taking exceptions to the Hearing Officer's recommendation. The Hearing Officer recommends that the Board not consider the additional evidence, on the grounds that it was not timely submitted, that the two records in the submission could have been subpoenaed earlier than the Objector claims, and that the information the Objector claims it sets forth is not clear, in the absence of additional explanatory testimony. In addition, the Hearing Officer stated that the submission was outside the scope of his request for supplementation of the record and could not have been part of the exceptions to the recommendation, as such recommendation had yet to be issued.

The Hearing Officer then divided his recommendation into separate parts, with each part identifying the specific objection, the position of the Candidate and the Objector as to that objection, and the Hearing Officer's analysis and conclusion/recommendation thereof.

- A) **Candidate's address on the Statement of Candidacy misidentifies his residence.** Specifically, the Statement lists the residence as being in Springfield, while the location of the street address is actually in Leland Grove. Because there is no dispute that the candidate actually resides at the street address listed, and the post office and voter registration lists Springfield as the municipality, the Hearing Officer recommends this objection be overruled as the Candidate substantially complied with the applicable statute.
- B) **Candidate's failure to be a "qualified voter" in the city of Springfield constitutes a false affidavit.** Case law has held that the purpose of the Statement of Candidacy is to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks. The Hearing Officer noted that the Candidate's mailing address and voter registration lists Springfield as his municipality. Furthermore, he is qualified to enter the Primary Election whether he lives in Springfield or Leland Grove. Since the purpose of the Statement of Candidacy has not frustrated, the recommendation is to overrule this objection on the grounds that there has been compliance or substantial compliance with applicable law.
- C) **The candidate's address on his nominating petitions is not in the city of Springfield but in a different municipality. Since the nominating petitions require the candidate's address to be listed, failure to do so constitutes a false statement.** Similar to the analysis above, the objection does not dispute the address (candidate does reside at 2024 Greenbriar), but the

description of the address. The Hearing Officer further notes the case law, which holds that the purpose for the requirement of a candidate listing his residence address is to prevent a candidate from fraudulently running in an election when he is not a resident of the political division in which he seeks office. Since the purpose of the address requirement on a nominating petition has not been frustrated, and for the reasons described above, the recommendation is to find compliance or substantial compliance and overrule the objection.

- D) Candidate's nominating petitions fail to list the county of residence.** The Objector notes that the 7th judicial circuit consists of 7 counties, and the failure of the Candidate to list his county of residence renders the nominating petitions invalid. The Hearing Officer notes that there is no express requirement in Section 7-10 that the candidate list his county as part of his address. The requirement cited by the Objector refers to the qualified electors who signed the nominating petitions. In the absence of such a requirement on the part of the Candidate, the recommendation is to overrule this objection.
- E) Objector states that the nominating papers fail to indicate that the candidate resides in a "city, village or unincorporated area."** The Hearing Officer concluded that Section 7-10 does not require a candidate to include the word "city", "village" or "unincorporated area" as part of the address, and as such, the objection should be overruled.
- F) The circulator's statement on numerous petition pages lists the circulator (who is also the Candidate) address as being in Springfield, instead of Leland Grove, which constitutes a false affidavit.** Given the purpose of the requirement that a circulator list his address on the affidavit as stated in the relevant case law, that is; to protect the integrity of the electoral process by providing a means to locate the circulator in order to call him to testify before the electoral board as to the method of gathering the signatures on petitions he circulated, and the fact that this purpose has not been frustrated since the Candidate lives at the address listed, the Candidate was in substantial compliance with Section 7-10 and the objection should be overruled.
- G) Candidate failed to identify on his Statement of Candidacy the judicial vacancy he is seeking, where there are multiple vacancies in the 7th circuit.** The Objector argues that the certification from the Supreme Ct. includes the vacancy to be filled (Leo J. Zappa, Jr.). He further argues that the designation of the office is incorrect, in that the Candidate describes the office as 7th District, as opposed to 7th Circuit. There is no 7th Judicial District. The Candidate argues that there is no basis for confusion as the Statement of Candidacy states that he resides in Sangamon County and the other 7th circuit judgeship is not on the Primary Election ballot in Sangamon County. The Hearing Officer's analysis began by noting that Section 7-10 only requires the office sought to be listed on the Statement of Candidacy. It does not require a judicial vacancy to be specifically listed. The Election Code does not define "office" or "judicial office" however the Illinois Constitution (Art VI, Section 7) describes the office as "circuit judge". The Hearing Officer then concluded that the Candidate's nominating papers, when read together, clearly show that the Candidate is seeking the office of circuit judge, 7th circuit, filling the vacancy of Leo J. Zappa, Jr., despite any technical misnomers, (such as "Circuit Judge in the district of the 7th Judicial District", and thus constitute substantial compliance with Section 7-10. This is supported by the case law, which established a two part test: 1) the error must not result in a basis of confusion among the petition signers and 2) the purpose of the nominating papers must not be frustrated by the error. In this case, there is no confusion because there is no 7th Judicial District. Therefore, one could only conclude that the Candidate was referring to the 7th Circuit.

- H) **Candidate failed to adequately describe the vacancy on his nominating petitions, identifying said vacancy as “Leo J. Zappa” as opposed to “Leo J. Zappa, Jr.”.** The Hearing Officer recommends this objection be overruled as there is no basis of confusion as a result of omitting the “Jr.” designation, and noted that primary purpose of the nominating petition process was not frustrated by the omission. In any event, the Candidate substantially complied with Section 7-10.
- I) **Candidate listed the office as “circuit court judge” and “circuit judge”, which is different than the description of the office in the Candidates Guide, published by the State Board of Elections, which describes the office as “judge of the circuit court”.** The Hearing Officer recommends denying the objection since the Candidate adequately described the office. The description of the office in the Candidate’s Guide is not binding on this or any other candidate.
- J) **Objector asserts that neither the Statement of Candidacy nor the nominating petitions correctly sets forth the exact office the Candidate is seeking, as certified by the Chief Justice of the Illinois Supreme Court.** This objection is substantially the same as those listed in paragraphs G, H and I above, except he is further alleging that the description of the office differs in the two documents (Statement of Candidacy and nominating petition). The Hearing Officer recommends denying this objection based on there being no basis for confusion resulting from the differing descriptions of the office. When read together, it is clear that the Candidate is seeking the office of judge of the circuit court, 7th circuit, vacancy of the Honorable Leo J. Zappa, Jr., and thus is in substantial compliance with Section 7-10.
- K) **The Objector asserts that the Candidate listed the office as 7th Judicial District on the Statement of Candidacy and as 7th Judicial Circuit on his nominating petitions. The failure to state the office on both documents exactly as certified by the Supreme Court renders them insufficient in law.** Objector further argues that there is a distinction between judicial districts and judicial circuits, and that there are 2 vacancies in the 7th circuit and one appellate district vacancy available in the upcoming Primary Election. The Hearing Officer noted that there was no basis of confusion as set forth in the case law, since the office was adequately described on the nominating petitions (7th judicial circuit), which is the document seen and signed by petition signers. Any possible confusion resulting from the designation on the Statement of Candidacy is resolved by the fact that there is no 7th judicial district. Therefore, the only possible office the candidate could be running for is 7th judicial circuit judge, which is especially clear when the petitions and Statement of Candidacy are read together. Therefore, the Hearing Officer concludes that the Candidate has substantially complied with Section 7-10, and the objection should be overruled.
- L) **Objector alleges that the Statement of Economic Interest is invalid, because it fails to list the judicial vacancy that the Candidate is seeking to fill.** The Hearing Officer noted that the statute doesn’t address whether a hearing officer can evaluate the contents of the Statement, and acknowledged that the case law is unclear on that issue. However, he did note that were he to evaluate the adequacy of the Statement, he believes the Candidate is in substantial compliance, since the statute only requires that such Statement be filed with respect to the office sought. It does not require the Candidate to list the vacancy, or even the district number. In addition, the Hearing Officer noted that the purpose of the Statement is to facilitate the public’s right to know certain financial information about a given candidate. Since the Candidate did file the Statement with respect to his judicial candidacy, and indicated that he is seeking the office of circuit judge, the purpose of the Statement was not thwarted, and the Candidate’s filing thereof was in substantial compliance. In any event, the case law referenced by the Hearing Officer indicates that removal from the ballot is not the appropriate remedy where the candidate did not correctly or inaccurately filled out the same.

- M) Objector makes a general allegation that the Candidate engaged in a pattern of fraud and false swearing with respect to four petition sheets he circulated, in addition to false swearing on the Statement of Candidacy and Economic Interest Statement (re-arguing the residency issue).** The Hearing Officer recommends overruling this objection on the grounds that no evidence was submitted by the Objector to prove his allegations.
- N) Objector challenges the Candidate's Statement of Candidacy based on his not specifying that he is seeking "nomination" as opposed to election to the office.** The Hearing Officer recommends denying the objection based on substantial compliance, in that Section 7-10 does not specifically require a candidate to state that he is seeking nomination or election to the given office, and noted that he could only be seeking nomination, since he was not running for an office which is elected at the Primary Election (such as party committeeman). In any event, there is no dispute the Candidate here is seeking the nomination, so any technical deficiency is cured by the heading on the petition that clearly states the candidate is seeking nomination.
- O) Candidate has failed to comply with Section 7-10.2, in that he did not include a statement on his petitions that he has not changed his name within the past three years.** Given the fact that the Candidate has not changed his name in the past three years, it was not necessary to include such a statement on his petitions (the Candidate did include the Section 7-10.2 language on his Statement of Candidacy, but left it blank since it was not applicable). The Hearing Officer recommends that this objection should be dismissed.
- P) Objector alleges that certain petition pages are not of uniform size, and thus the entire petition should be stricken.** It was determined by the Hearing Officer that one petition page (pg. 113) was not uniform, in that it continued onto the following page, which was un-numbered. The un-numbered page failed to include the proper heading. Based on this, the Hearing Officer recommends that this one page be stricken.
- Q) Objector argues that the entire petition should be stricken, based on an aggregation of all the deficiencies alleged.** The Hearing Officer found no authority that substantial compliance with the provisions of the Election Code is somehow defeated by an aggregation of allegations that individually, are not sufficient to warrant removal from the ballot. Therefore, it is his recommendation to deny this objection.

The overall recommendation is to;

- 1) Deny the Candidate's Motion to Strike and Dismiss
- 2) Deny the objections raised by the Objector, with the exception of the objection to page 113.
- 3) Certify Candidate John "Mo" Madonia to the March 18, 2014 ballot for the office of Circuit Court Judge, 7th Circuit, vacancy of the Honorable Leo J. Zappa, Jr.

Recommendation of the General Counsel: I concur with the Recommendation of the Hearing Officer. The Objector has brought numerous objections, many of which are interrelated, regarding the nominating papers of the Candidate. The allegations generally involve the designation of the Candidate's address, the office and vacancy which he is seeking as well as other deficiencies that the Objector feels should disqualify the Candidate from appearing on the ballot. I read the objection and the Hearing Officer's analysis with the Welch case (cited by the Hearing Officer) in mind. That case establishes the general principle that ballot access "is a substantial right not lightly to be denied", while at the same time balancing this right with the interest of maintaining the integrity of the electoral process. The central

issue in my mind is whether the Candidate, in filling out his nominating papers, did so in a way that substantially complied with the relevant provisions of the Election Code, thereby maintaining the integrity of the petition process or were the alleged deficiencies of such a degree that confusion among the petition signers was readily apparent, and the purposes of the Code's requirements were thereby thwarted. Upon reading the recommendation it is clear to me that (with the exception of the challenge to page 113), the objections ought to be dismissed. I did not see any possible basis to conclude that there was voter confusion; there was certainly no evidence of that, or that any of the Code's requirements were compromised, and to the extent that there were any deviations from the relevant statutory provisions, they were inconsequential at best. Therefore, I recommend that the Candidate be certified for the office he seeks.

**BEFORE THE DULY CONSTITUTED ELECTORAL BOARD
FOR THE HEARING AND PASSING UPON OF NOMINATION OBJECTIONS
TO NOMINATION PAPERS FOR CANDIDATES FOR ELECTION TO THE OFFICE
OF JUDGE OF THE CIRCUIT COURT, 7TH JUDICIAL CIRCUIT, VACANCY OF THE
HONORABLE LEO J. ZAPPA, JR.**

ROBERT KENT GRAY, JR.,)	
)	
Petitioner-Objector,)	
)	
vs.)	Case No. 13-SOEB-GP-102
)	
JOHN "MO" MADONIA)	
)	
Respondent-Candidate.)	
)	

RECOMMENDATION OF HEARING EXAMINER

TO: Kent Gray, Jr. 2116 Illini Road Leland Grove, IL 62704 kent@kentgray.com	John "Mo" Madonia c/o John G. Fogarty, Jr. 4043 N. Ravenswood Suite 226 Chicago, IL 60613 john@fogartylawoffice.com
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Steve Sandvoss
Illinois State Board of Elections
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Springfield, IL 62704
ssandvoss@elections.il.gov

INTRODUCTION

Objector presents nineteen (19) separate objections challenging the Candidate's Statement of Candidacy, Nomination Petitions, and Statement of Economic Interests (referred to collectively as "Nominating Papers" in this Introduction). The objections to Candidate's Nominating Papers can be summarized as:

- Challenging Candidate's description of his address, residence and/or place of voter registration;
- Challenging Candidate's description of the office he seeks;

- Asserting a constitutional challenge;
- Asserting Candidate's pattern and practice of false swearing relating to Candidate's address;
- Asserting Candidate's failure to state that he seeks nomination rather than election;
- Asserting Candidate's failure to affirmatively state that he has not changed his name in the past three years;
- Asserting that certain Nominating Petition pages are not of uniform size; and
- Asserting that, in the aggregate, Candidate's Nominating Papers do not comply with the Election Code.

Based upon the analysis set forth in this Recommendation, the objections made to Candidate's Nominating Papers (other than the objection relating to uniform size) should be denied. It is the recommendation of the Hearing Examiner that the Board find that Candidate's Nominating Papers comply or substantially comply with the Illinois Election Code and place Candidate on the ballot at the primary election to be held on March 18, 2014.

BACKGROUND

This matter commenced on December 9, 2013, when Robert Kent Gray, Jr., (hereinafter "Objector") filed "Verified Objector's Petition" with the State Board of Elections (attached as **Exhibit A**). Objector alleged that the nominating papers of John "Mo" Madonia (hereinafter "Candidate"), were insufficient in that they were not in conformance with certain provisions of the Illinois Election Code. Specifically, Objector alleges that Candidate's Statement of Candidacy, Nominating Petitions, and Statement of Economic Interests do not comply with the requirements of the Election Code for the following reasons:

- **Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at "2024 Greenbriar, in the City of Springfield, Illinois." The address shown on the candidate's Statement of Candidacy is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy contain such information and be in the form provided by the statute. The statute mandates that the Statement of Candidacy "shall set out the address of such candidate". The failure to so state is insufficient at law and is factually a false affidavit made under sworn oath. (Objection 4)**
- **Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at "2024 Greenbriar, in the City of Springfield, Illinois" and FURTHER states "that I am a qualified voter therein". The address shown on the candidate's Statement of Candidacy is not within the corporate boundaries of the City of Springfield and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires**

that the Statement of Candidacy contain such information and be in the form provided by the statute. The statute mandates that the Statement of Candidacy “shall set out the address of such candidate” and that the candidate lives “therein”. The failure to be a “qualified voter therein” is insufficient at law and is factually a false affidavit made under sworn oath. (Objection 5)

- Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at “2024 Greenbriar, Springfield, IL 62704”. The address shown on the Candidate’s Nominating Petitions is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petition contain such information and be in the form provided by the statute. The statute mandates that the petition sheets containing signatures “shall contain ... [the candidate’s] place of residence”. The failure to so state is insufficient at law and is factually a false statement. (Objection 6)
- Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at “2024 Greenbriar, Springfield, IL 62704”. The address shown on the candidate’s Nominating Petitions does not indicate what county he resides in. The 7th Judicial Circuit is statutorily defined and comprised of six Illinois counties and the failure to indicate residency in one of those six counties is insufficient at law. (Objection 7)
- Your Objector states that the candidate has filed multiple Nominating Petition pages indicating that he, as circulator, “do [sic] hereby certify that I reside at 2024 Greenbriar, in the City of Springfield, zip code 62704”. The address shown on the candidate’s Nominating Petitions is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the circulator’s affidavit be in the form provided by the statute. The statute requires the circulator to “certify” his address. The failure to so state is insufficient at law and is factually a false affidavit made under oath. (Objection 8)
- Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to “set out ... the office for which he is a candidate.” The failure to so state is insufficient at law. (Objection 9)
- Your Objector states that the candidate has filed a Statement of Economic Interests which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The failure to so state is insufficient at law. (Objection 10)

- Your Objector states that the candidate has filed Nominating Petitions which identify the judicial vacancy he is seeking as that of "Leo J. Zappa". The Chief Justice of the Illinois Supreme Court Certified [sic] the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The failure to so state is insufficient at law. (Objection 11)
- Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the judicial vacancy being sought by the candidate differently. The Illinois Supreme Court Certified [sic] the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, [sic] states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." Neither document correctly sets out the "exact vacancy ... the candidate is seeking". The failure to so is [sic] insufficient at law. (Objection 12)
- Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the district of the judicial vacancy being sought by the candidate differently. The candidate described the vacancy as being in the "7th Judicial District" on his Statement of Candidacy (in two places) and as being in the "7th Judicial Circuit" on his nominating petitions. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, [sic] states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." The candidate's documents set out two different vacancies and not the "exact vacancy ... the candidate is seeking". The failure to so state is insufficient at law. (Objection 13)
- Your Objector states that the candidate has filed multiple Nominating Petition pages describing the office sought in the heading of the petition as both "Circuit Court Judge" and, directly below, as "Circuit Judge". The Judicial Candidate Packet provided by the Illinois State Board of Elections, indicates that the correct description of the office is that of "Judge of the Circuit Court". The failure to so correctly describe is insufficient at law. (Objection 14)

- Your Objector states that the candidate has filed Nominating Petitions of differing sizes. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petitions be of “uniform size”. The failure to so [sic] causes the filing to be insufficient at law. (Objection 15)
- Your Objector states that the candidate has filed multiple Nominating Petition pages failing to indicate whether he lives in a “city, village [or] unincorporated area”. The failure to so state is insufficient at law. (Objection 16)
- Your Objector states that the candidate has filed multiple Nominating Petition pages failing to include a statement indicating whether he has changed his name during the past three years. The Illinois Election Code, 10 ILCS 5/7-10.2 requires such a statement to be provided to voters. The failure to so state is insufficient at law. (Objection 17)
- Your Objector states that the candidate has filed a Statement of Candidacy including a statement pursuant to 10 ILCS 5/7-10.2, but failed to provide the information required by statute, or that said information was inapplicable to this candidate. The failure to affirmatively make such a statement is insufficient at law. (Objection 18)
- Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he is a candidate for nomination to the office specified. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the statement “I am a candidate for nomination.” The failure to so state is insufficient at law. (Objection 19)
- Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he requests his name be printed upon the official ballot for nomination. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the candidate to specify how the candidate’s name be printed upon the official ballot. The failure to designate “nomination” negates the authority of the Election Authorities to certify the ballot for the Primary Election and is insufficient at law. (Objection 20)
- Your Objector states that the candidate has filed a false Statement of Candidacy and has made a false statement on each and every one of the nominating petition sheets to the affect that he resides at 2024 Greenbriar, Springfield, IL 62704 when, in fact, he actually legally resides at 2014 [sic] Greenbriar, Leland Grove, IL 62704. Such false representations of residency are in violation of ILL.CONST. (1970) art. IV, §2(c), making the Candidate disqualified from, and ineligible to seek and serve in, the office for which the nomination papers were filed. (Objection 21)

- **Your Objector states that there will be presented substantial, clear, unmistakable, and compelling evidence that establishes a “pattern of fraud and false swearing” along with an “utter and contemptuous disregard for the mandatory provisions of the Election Code.” An examination of the nominating papers will reveal a pervasive and systematic attempt to undermine the integrity of the electoral process. Consequently, your Objector states that this Electoral Board “cannot close its eyes and ears” but will be compelled to void the entire nominating petition as being illegal and void in its entirety under the principles set forth in [various cases cited]. This allegation is made with specific reference to the 4 of the 112 nominating petition sheets personally circulated by the candidate (nos. 5, 6, 7 and 8), the Statement of Candidacy, and the receipt of filing for the Statement of Economic Interests. Your Objector will produce documentary and testimonial evidence that will establish inter alia that: (a) Candidate, John “Mo” Madonia, made multiple sworn affidavits falsely stating under oath that he resides at an address within the City of Springfield, Illinois, when, in fact, he does not, rendering such oaths false and perjurious [sic]. (Objection 22)**

PROCEDURAL HISTORY

On December 19, 2013, Candidate, through his attorney John G. Fogarty, Jr., filed “Motion to Strike and Dismiss Objector’s Petition” in response to the Verified Objector’s Petition (hereinafter “Motion to Strike and Dismiss” and attached as **Exhibit B**). Specifically, Candidate argued that the Verified Objector’s Petition must be dismissed because Objector is not a “legal voter” at the address stated therein. Moreover, Candidate argued that because the Statement of Candidacy, Nominating Petitions, and Statement of Economic Interests were in substantial compliance with the Election Code, the Electoral Board should strike and dismiss the Verified Objector’s Petition and enter an Order declaring that Candidate’s name be printed on the 2014 Primary Election Ballot. Also on December 19, 2013, Objector filed “Objector’s Brief” to supplement his Verified Objector’s Petition (attached as **Exhibit C**). On December 23, 2013, Objector filed “Objector’s Response to Candidate’s Motion to Strike and Dismiss” (hereinafter “Response” and attached as **Exhibit D**). On December 26, 2013, Candidate filed “Reply in Support of Motion to Strike and Dismiss” (hereinafter “Reply” and attached as **Exhibit E**). A full day hearing on the Verified Objector’s Petition and Motion to Strike and Dismiss was held on January 2, 2014 (a transcript of said hearing is attached hereto as **Exhibit F**). On January 3, 2014, Objector filed “Objector’s Brief in Response to Hearing Officer’s Request” (hereinafter “Objector’s Brief in Response” and attached hereto as **Exhibit G**). On January 10, 2014, Objector emailed the Hearing Examiner two documents and asserted that said documents should be considered by the Hearing Examiner as additional evidence (the email and documents are attached as **Exhibit H**). On January 13, 2014, Candidate, through his attorney John G. Fogarty, Jr., responded to Objector’s email and documents and asserted that said documents should not be considered by the Hearing Examiner as additional evidence (the email is attached as **Exhibit I**). On January 13, 2014, Objector emailed the Hearing Examiner further documentation of Objector’s Freedom of Information Act request that produced the additional evidence submitted on January 10, 2014 (the email is attached as **Exhibit J**). On January 13, 2014, Candidate, through his attorney John G. Fogarty, emailed the Hearing Examiner to respond to Objector’s January 13, 2014 email (the email is attached hereto as **Exhibit K**).

Candidate's Statement of Candidacy, receipt for filing his Statement of Economic Interests, Loyalty Oath, and Nominating Petitions are attached hereto as **Exhibit L**.

Objector's Exhibits 1 through 8 and Candidate's Exhibit 1, which were submitted by Objector and Candidate, respectively, are also attached hereto.

OBJECTOR'S SUBMISSION OF ADDITIONAL EVIDENCE

In his January 10, 2014 email to the Hearing Examiner, Objector argues that the additional evidence attached thereto should be considered by the Hearing Examiner because such consideration is permitted by the Hearing Examiner's request for supplementation to the record, the procedure for the parties to file exceptions to the Hearing Examiner's Recommendation, and/or the Board's Rules and Procedures. For the following reasons, the Hearing Examiner recommends the Board decline to consider the additional evidence submitted on January 10, 2014.

Objector's Argument

Objector argues that the documents he submitted on January 10, 2014 should be considered by the Hearing Examiner as additional evidence because the Hearing Examiner requested that Objector supplement the record after the close of the January 2, 2014 hearing. Candidate further argues that the documents he submitted on January 10, 2014 should be considered by the Hearing Examiner as additional evidence because both parties have the ability to supplement their cases with exception statements to the Board. Candidate further argues that the procedural rules adopted by the Board allow the consideration of the additional evidence. Objector also asserts that these documents establish that both Candidate and Objector reside in Leland Grove.

Candidate's Argument

Candidate argues that the documents submitted by Objector on January 10, 2014 should not be considered by the Hearing Examiner as additional evidence because said documents were submitted after the January 2, 2014 hearing and Objector has not shown that said documents were unavailable when the parties made their pretrial disclosures or at the time of the hearing. Candidate further argues that because the Objector's request for the documents was not timely made, the recent holidays and weather that Objector asserts as contributing to the late submission are not relevant. Candidate also asserts that these documents are not relevant because they do not contribute material information to Objector's case, and, if they are relevant, they are cumulative because the same information is contributed by other documents already in the record.

Analysis

Objector's submission of additional evidence requires a two-part analysis: (1) whether Objector's submission is permissible; and (2) whether, if the Objector's submission is permissible, the additional evidence has significance.

During the January 2, 2014 hearing, the Hearing Examiner requested that Objector supplement the record with regard to his argument that when viewed in the aggregate, Candidate's nominating papers do not comply with the Election Code.¹ The Hearing Examiner requested such supplementation by 5:00 p.m. on January 3, 2014. The additional evidence submitted by Objector on January 10, 2014 does not pertain to Objector's aggregate argument. Moreover, the additional evidence submitted by Objector on January 10, 2014 was submitted seven days after the deadline for supplementation imposed by the Hearing Examiner. Accordingly, the additional evidence submitted by Objector on January 10, 2014 falls outside the scope of the Hearing Examiner's request that Objector supplement the record and the Hearing Examiner recommends that the Board decline to consider said additional evidence.

Pursuant to the Rules of Procedure adopted by the Board pursuant to Section 10-10 of the Election Code, and as the parties were informed by the Hearing Examiner, there is a procedure for both the objector and the candidate to file exceptions to the hearing examiner's recommendation after said recommendation is filed. *See* State Board of Elections, Rules of Procedure, Rule 5. The additional evidence submitted by Objector on January 10, 2014 cannot be construed as an exception to this Recommendation because this Recommendation had not yet been filed. Accordingly, the additional evidence submitted by Objector on January 10, 2014 falls outside the scope of the procedure for the parties to file exceptions to the Hearing Examiner's Recommendation and the Hearing Examiner recommends that the Board decline to consider said additional evidence.

The Board's Rules of Procedure also provide that "[t]he Board will not hear evidence that could have been but was not presented to the hearing examiner, nor will the Board consider objections that could have been, but were not raised in the original objection." State Board of Elections, Rules of Procedure, Rule 10. Objector has not established that the additional evidence submitted on January 10, 2014 could not have been submitted prior to or during the January 2, 2014 hearing. Accordingly, the Hearing Examiner recommends that the Board decline to consider said additional evidence.

The recent holidays and weather that Objector asserts as contributing to the late submission are not relevant. Objector could have subpoenaed from the Sangamon County Clerk the documents now submitted as additional evidence or subpoenaed the Sangamon County Clerk or an employee of his office to testify at the January 2, 2014 hearing. Objector bears the burden of proof with respect to his Objections.

If the Board disagrees with the Hearing Examiner's recommendation that the additional evidence submitted should not be considered, the significance of the additional evidence is discussed in relation to the individual objections to which it corresponds. *See* Part II.A.1.a

¹ *See infra*, Part II.F (Objector's aggregate argument).

(Objection 4), Part II.A.1.b (Objection 5), Part II.A.2.a (Objection 6), and Part II.A.3.a (Candidate's Motion to Dismiss Verified Objector's Petition).

**HEARING EXAMINER'S RULINGS ON OBJECTOR'S OBJECTIONS
AND CANDIDATE'S MOTION TO DISMISS**

I. Standard for Compliance with the Illinois Election Code

Ballot access is a "substantial right not lightly to be denied." *Welch v. Johnson*, 147 Ill. 2d 40, 56 (1992). See also *Samuelson v. Cook County Officers Electoral Board*, 2012 IL App (1st) 120581 at ¶45; *Siegel v. Lake County Officers Electoral Board*, 385 Ill. App. 3d 452, 460 (2nd Dist. 2008). "The Election Code is designed to balance a candidate's right to have his name appear on the ballot with the need to preserve the integrity of the petition process and to encourage qualified voters' participation." *Samuelson*, 2012 IL App (1st) 120581 at ¶45. Before a candidate's name is removed from the ballot, both the candidate's rights and voters' rights must be weighed. See *Samuelson*, 2012 IL App (1st) 120581 at ¶45; *Huskey v. Municipal Officers Electoral Board for the Village of Oak Lawn*, 15 Ill. App. 3d 201, 205 (1st Dist. 1987).

"The general purposes of election laws is [sic] to obtain fair and honest elections and to obtain a correct expression of the intent of the voters." *Courtney v. County Officers Electoral Board*, 314 Ill. App. 3d 870, 872-73 (1st Dist. 2000). The general purpose of Section 7-10 is to provide an "orderly procedure" for qualified persons to enter primary elections. See *Akin v. Smith*, 2013 IL App (1st) 130441 at ¶6; *Salgado v. Marquez*, 356 Ill. App. 3d 1072, 1076 (2nd Dist. 2005); *Lewis v. Dunne*, 63 Ill. 2d 48, 52-53 (1976).

Substantial compliance, rather than strict compliance, can satisfy mandatory provisions of the Election Code. See, e.g., *Atkinson v. Roddy*, 2013 IL App (2nd) 130139 at ¶22; *Akin*, 2013 IL App (1st) 130441 at ¶12. "Substantial compliance is achieved when a deviation from the Election Code is minor or technical in nature and the deviation does not defeat the thrust, purpose, and effect of the Election Code." *Atkinson*, 2013 IL App (2nd) 130139 at ¶16 (citing *Samuelson*, 2012 IL App (1st) 120581 at ¶36). However, "substantial compliance is not operative to release a candidate from compliance with the provisions intended by the legislature to guarantee a fair and honest election." *Samuelson*, 2012 IL App (1st) 120581 at ¶20 (citing *Craig v. Peterson*, 39 Ill. 2d 191, 196 (1968)); *Madden v. Schumann*, 105 Ill. App. 3d 900, 903-04 (1st Dist. 1982). "Strict compliance has been found applicable where the requirements of the Election Code 'contribute substantially to the integrity of the election process.'" *Samuelson*, 2012 IL App (1st) 120581 at ¶20 (citing *Craig*, 39 Ill. 2d at 196); *Madden*, 105 Ill. App. 3d at 903-4.

Illinois courts consider the particular purpose of the particular nominating paper or portion thereof in determining whether a candidate has substantially complied with the requirements of Section 7-10. The purpose of the statement of candidacy is "to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks." *Lewis v. Dunne*, 63 Ill. 2d 48, 53 (1976). On the other hand, the "primary purpose" of nominating petitions is "to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated

initiative and at least a minimal appeal to eligible voters.” *Salgado*, 356 Ill. App. 3d at 1079. Furthermore, the purpose of filing a statement of economic interests is to “facilitate the public’s right to information regarding the candidate’s financial dealings with the unit of government in which he or she seeks office.” *Atkinson*, 2013 IL App (2nd) 130139 at ¶18. Finally, the purpose of the circulator’s address in the circulator’s affidavit is “to protect the integrity of the electoral process by furnishing the circulator’s address which enables the Board to locate her, question her about the signatures, and hold her responsible for her oath.” *Sakonyi v. Lindsey*, 261 Ill. App. 3d 821, 825-26 (5th Dist. 1994).

Moreover, it is well-established that nominating papers may be read together to achieve substantial compliance with the requirements of Section 7-10. *Salgado*, 356 Ill. App. 3d at 1076; *Madden*, 105 Ill. App. 3d at 52-53; *Lewis*, 63 Ill. 2d 48 (1976).

II. Objections and Motion to Dismiss Objector’s Petition

A. Statements of address and/or residence

1. Candidate’s statements of his address and/or residence on his Statement of Candidacy

In Objections 4 and 5, Objector asserts that Candidate’s statements of his address and where he resides and is a qualified voter on his Statement of Candidacy are insufficient. For the following reasons, and based on the unique set of facts in this matter, the Hearing Examiner recommends a finding that Candidate’s statements of his address and where he resides and is a qualified voter on his Statement of Candidacy comply or substantially comply with Section 7-10.

- a. Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at “2024 Greenbriar, in the City of Springfield, Illinois.” The address shown on the candidate’s Statement of Candidacy is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy contain such information and be in the form provided by the statute. The statute mandates that the Statement of Candidacy “shall set out the address of such candidate”. The failure to so state is insufficient at law and is factually a false affidavit made under sworn oath. (Objection 4)**

Objector’s Argument

Objector argues that Candidate’s Statement of Candidacy does not comply with Section 7-10 because Candidate’s inclusion of Springfield, even if Springfield is considered to be Candidate’s mailing address, is not sufficient pursuant to Section 7-10. Objector further argues that *Jones v. Dodendorf*, *Knobeloch v. Electoral Board for City of Granite City*, and *Powell v. East St. Louis Electoral Board* support his assertion that Candidate has not complied with Section 7-10 in stating Springfield in his Statement of Candidacy. *Knobeloch*, 337 Ill. App. 3d 1137 (5th Dist. 2003); *Powell*, 337 Ill. App. 3d 334 (5th Dist. 2003); *Jones v. Dodendorf*, 190 Ill.

- App. 3d 557 (2nd Dist. 1989). Objector also asserts that this matter is similar to the “post office box cases” that do not allow a person to list only their “post office box” instead of address. Objector further argues that the candidate’s address is a mandatory element of the statement of candidacy pursuant to *Akin* and that Illinois case law regarding address mistakes is confined to minor typographical errors such as transposed numbers. 2013 IL App (1st) 130441. Objector further argues that Candidate should have stated that his address is in Springfield but he resides in Leland Grove.

Candidate’s Argument

Candidate argues that *Lewis* stresses substantial compliance as the requisite standard and that the address stated in his Statement of Candidacy is in substantial compliance with Section 7-10. 63 Ill. 2d 48. Candidate cites to *Ryan v. Landek* in support of his assertion that his Statement of Candidacy is in compliance with Section 7-10 in spite of the use of Springfield in his address. 159 Ill. App. 3d 10 (1st Dist. 1987). Candidate also asserts that the purpose of a statement of candidacy is to ensure a candidate is qualified to run for election in the political unit involved and that there is no dispute Candidate is so qualified. Candidate further argues that the use of Springfield in his Statement of Candidacy has no negative impact on the electoral process.

Analysis

Section 7-10 requires that a candidate’s statement of candidacy “set out the address of such candidate”, among other things. 10 ILCS 5/7-10. Moreover, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in “substantially the following form”, and the template states, in part, “Address” and “I reside at ...” 10 ILCS 5/7-10.

There is no dispute that Candidate’s Statement of Candidacy indicates that Candidate’s address is in “Springfield” and that Candidate “reside[s] ... in ... Springfield”. Exhibit L, pg. 1. There is also no dispute that Candidate’s physical residence and location are outside the corporate boundaries of Springfield and are inside the corporate boundaries of Leland Grove. There is further no dispute that “2024 Greenbriar” is a real, not fictitious, physical residence and location; that Candidate actually lives at “2024 Greenbriar” and not any other physical residence or location; and that both “2024 Greenbriar” in Springfield or “2024 Greenbriar” in Leland Grove refer to the same physical residence or location. This Objection 4, as well as other subsequent objections that raise an issue with Candidate’s address, residence and/or place of voter registration, dispute not the address itself but the description of the address.

Accordingly, the question becomes whether Candidate’s uses of Springfield in his Statement of Candidacy to state that Candidate’s address is Springfield and that Candidate resides in Springfield are in substantial compliance with Section 7-10.

First, Candidate uses Springfield in his address. The Election Code does not define “address”, “reside”, “residence”, “residence address”², or “place of residence”. See 10 ILCS 5/1-

² Section 7-10 defines “residence address” only with regard to qualified primary electors who sign nominating petitions. See *infra* Part II.A.5 (Objection 17).

3; 10 ILCS 5/7-4; 10 ILCS 5/7-10. Black's Law Dictionary defines "address" as "the place where mail or other communication is sent". *Black's Law Dictionary* 44 (9th ed. 2009). Candidate's voter registration lists Springfield as his city and in his mailing address.³ See Candidate's Exhibit 1. Accordingly, Candidate's use of Springfield in his address on his Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

Second, Candidate uses Springfield in stating that he resides in Springfield. The Election Code does not define "address", "reside", "residence", "residence address"⁴, or "place of residence". See 10 ILCS 5/1-3; 10 ILCS 5/7-4; 10 ILCS 5/7-10.

The case law cited by Objector is distinguishable. In *Jones v. Dodendorf*, the pages of the candidate's nominating petitions were not numbered pursuant to Section 10-4, which is a provision analogous to Section 7-10 for petitions in certain other cases. 190 Ill. App. 3d at 559. The Second District Appellate Court determined that no compliance with a statutory provision cannot be substantial compliance and focused on the purpose of the requirement of numbering pages of nominating petitions as relating to the integrity of the election process. *Id.* at 561-62. Candidate's indication that he resides in Springfield is not a case of no compliance like *Jones v. Dodendorf*. *Knobeloch* and *Powell* are also cases in which there was no compliance with an Election Code provision. See *Knobeloch*, 337 Ill. App. 3d 1137 (5th Dist. 2003) (candidate's statement of candidacy and some nominating petitions were not signed and sworn before an Illinois notary public pursuant to Sections 10-4 and 10-5, a provision analogous to Section 7-12(8) for petitions in certain other cases); *Powell*, 337 Ill. App. 3d 334 (5th Dist. 2003) (candidate failed to file a statement of economic interests receipt therefor pursuant to Section 10-5).⁵

³ Objector argues that the additional evidence he submitted on January 10, 2014 establishes that Candidate and Objector are registered to vote in Leland Grove. If the Board determines that the additional evidence submitted on January 10, 2014 should be considered, the Hearing Examiner disagrees with Objector's analysis of the additional evidence. First, no testimony or evidence was submitted at the January 2, 2014 hearing or in Objector's January 10, 2014 email to explain the documents submitted on January 10, 2014 or the contents thereof. The Hearing Examiner is unable to evaluate the contents of the documents without a clear understanding of what "Voter Jurisdiction Information" demonstrates or the distinction between "Voter Jurisdiction Information" and "Voter Master Inquiry." Compare Exhibit H with Candidate's Exhibit 1. The Sangamon County Clerk designated the "Voter Master Inquiry" as "print screens of the official voter registration addresses from Sangamon County's voter registration system." Candidate's Exhibit 1. Second, the "Voter Jurisdiction Information[s]" state only that Candidate's and Objector's city is Leland Grove. See Exhibit H. Accordingly, the "Voter Jurisdiction Information[s]" submitted by Objector on January 10, 2014 do not contain an address for either Candidate or Objector, while the "Voter Master Inquir[ies]" previously submitted by both Candidate and Objector state mailing addresses for both Candidate and Objector in Springfield. See Candidate's Exhibit 1; Objector's Exhibit 2. Third, the Hearing Examiner confirmed that the State Board of Elections' computerized registration records indicate that Candidate and Objector's registered voter addresses are both in Springfield. Fourth, Objector could have subpoenaed the Sangamon County Clerk and/or an official from the Board to provide further clarification of the "Voter Jurisdiction Information" and the "Voter Master Inquiry," as well as the contents thereof. Objector failed to do so, and Objector bears the burden of proof. Finally, the Hearing Examiner notes that Objector's FOIA request designates Objector's address as Springfield. See Exhibit J.

⁴ Section 7-10 defines "residence address" only with regard to qualified primary electors who sign nominating petitions. See *infra* Part II.A.2.b (Objection 7).

⁵ In both *Knobeloch* and *Powell*, the Fifth District Appellate Court interpreted the Illinois Supreme Court case *DeFabio v. Gummersheimer* as rejecting the notion of substantial compliance with provisions of the Election Code. See *Knobeloch*, 337 Ill. App. 3d 1137 (5th Dist. 2003) and *Powell*, 337 Ill. App. 3d 334 (5th Dist. 2003) (interpreting *DeFabio*, 192 Ill. 2d 63 (2000)). The Second District Appellate Court disagreed with *Knobeloch's*

Objector's reliance on *Akin* is appropriate but without import. 2013 IL App (1st) 130441. Objector cites to *Akin* for the notion that address is a mandatory requirement of the statement of candidacy. 2013 IL App (1st) 130441. There is no question that address is a mandatory requirement of the statement of candidacy, but Illinois case law is clear that substantial compliance with a mandatory requirement is permissible. See *Atkinson*, 2013 IL App (2nd) 130139 at ¶22; *Akin*, 2013 IL App (1st) 130441 at ¶12.

In addition, the "post office box cases" referenced by Objector are distinguishable.⁶ In *Board of Education of Wapella Community Unit School District No. 5, De Witt County, Illinois v. Regional Board of School Trustees of McLean-De Witt Counties*, thirteen signatures on a petition for dissolution of a school district stated only a post office box number instead of a physical address. 247 Ill. App. 3d 555 (4th Dist. 1993). The Fourth District Appellate Court noted that the School Code did not expressly require petitions to state their addresses on the petition and that while the Election Code was not binding but could give reasonable guidelines, the addresses were sufficient if petitioners' identities could be readily determined. *Id.* at 558. The court determined that the thirteen petitioners who listed only a post office box "did not properly set forth their residence" because "[a] resident of any community could have a box at the Wapella post office as a place for receiving mail." *Id.* at 560. Here, there is no allegation or evidence that Candidate's use of Springfield instead of Leland Grove has any effect on the ability to determine Candidate's identity or location, and Candidate is qualified to enter this primary election whether he resides in Springfield or Leland Grove.

Lewis supports Candidate's argument that the address stated on his Statement of Candidacy is in substantial compliance with Section 7-10.⁷ The Illinois Supreme Court noted in *Lewis* that the purpose of the statement of candidacy is "to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks." 63 Ill. 2d at 53. Candidate is qualified to enter this primary election whether he resides in Springfield or Leland Grove. Accordingly, Candidate's use of Springfield to indicate where he resides does not frustrate the purpose of his Statement of Candidacy pursuant to *Lewis*.

The address used by Candidate in describing where he resides is both his mailing address and his registered voter address.⁸ See Candidate's Exhibit 1. In addition, the discrepancy between Springfield and Leland Grove to indicate where Candidate resides does not refer to different addresses but are merely different descriptions of the same address.

Moreover, this matter presents a very unique set of facts in both the relationship between Leland Grove and Springfield and the handling of voter registration by the Sangamon County

interpretation of *DeFabio* in *Jakstas v. Koske* and *Powell's* interpretation of *DeFabio* in *Atkinson*. See *Jakstas*, 352 Ill. App. 3d 861, 864 (2nd Dist. 2004) ("*DeFabio* was a case involving noncompliance, not substantial compliance."); *Atkinson*, 2013 IL App (2nd) 130139 at ¶ 21-22.

⁶ *Board of Education of Wapella Community Unit School District No. 5, De Witt County, Illinois* is the only case the Hearing Examiner located which discussed post office boxes in an applicable context.

⁷ Because *Ryan* discusses the purpose of the requirement that nominating petitions contain the candidate's address, it is distinguishable from this matter in relation to Objection 4 and will be discussed in the analysis of Objection 6. See *infra*, Part II.A.2.a (Objection 6).

⁸ See *supra*, Footnote 3.

Clerk. First, Leland Grove and Springfield are truly used interchangeably by both area residents and local government officials. *See generally* Candidate's Exhibits and Objector's Exhibits. Springfield surrounds Leland Grove, and Leland Grove does not have its own post office. Second, no evidence is presented that there is a single Illinois voter registered to vote at a Leland Grove address or that it is possible to be registered to vote at a Leland Grove address.⁹ Both Objector and Candidate submitted applications to the Sangamon County Clerk requesting registration to vote at a Leland Grove address, and both were registered to vote at a Springfield address.¹⁰ *See* Objector's Exhibits 2, 6 and 7; Candidate's Exhibit 1.

Candidate is in an obvious "Catch 22" because he would have been subject to challenge even if he stated Leland Grove on his Statement of Candidacy. Under those circumstances, Objector could have raised the objection that because Candidate is registered to vote in Springfield, the indication of Leland Grove on his Statement of Candidacy was improper.¹¹ Although Objector contends that Candidate should have indicated Springfield for his address and Leland Grove for where he resides, such differentiation is beyond the scope of the information needed to satisfy the purpose of the statement of candidacy "to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks." *Lewis*, 63 Ill. 2d at 53. Moreover, such differentiation is not required for substantial compliance and could, in fact, be confusing.

Based on the unique set of facts in this matter, the Hearing Examiner recommends that the Board deny Objection 4 and find that Candidate's Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

- b. **Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at "2024 Greenbriar, in the City of Springfield, Illinois" and FURTHER states "that I am a qualified voter therein". The address shown on the candidate's Statement of Candidacy is not within the corporate boundaries of the City of Springfield and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy contain such information and be in the form provided by the statute. The statute mandates that the Statement of Candidacy "shall set out the address of such candidate" and that the candidate lives "therein". The failure to be a "qualified voter therein" is insufficient at law and is factually a false affidavit made under sworn oath. (Objection 5)**

Objector's Argument

Objector argues that Candidate is not a qualified voter of Springfield, as stated in his Statement of Candidacy, because he does not reside within the corporate limits of Springfield and cannot vote for Springfield offices.

⁹ *See supra*, Footnote 3.

¹⁰ *See supra*, Footnote 3.

¹¹ *See supra*, Footnote 3.

Candidate's Argument

Candidate argues that the use of reside in the Section 7-10 statement of candidacy form and in the actual form provided by the State Board of Elections is not significant because Section 7-10 specifies that a candidate must state his address and he has substantially complied with such requirement. Candidate again cites to *Ryan* in support of his assertion that his Statement of Candidacy is in compliance with Section 7-10 in spite of the use of Springfield in his address. 159 Ill. App. 3d 10. Candidate further argues that he is a qualified voter in the district whether he states Springfield or Leland Grove. Candidate also asserts that the distinction raised by Objector is a technical distinction without a difference.

Analysis

Section 7-10 contains no express requirement that a statement of candidacy contain a statement that the candidate is a qualified voter at the address indicated therein. See 10 ILCS 5/7-10. However, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form". The template states, in part, "I reside at ... I am a qualified voter therein ..." 10 ILCS 5/7-10. Pursuant to *Lewis*, the purpose of the statement of candidacy is "to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks." 63 Ill. 2d at 53.

Candidate's voter registration indicates that Candidate is registered to vote at "2024 Greenbriar" in Springfield.¹² See Candidate's Exhibit 1. Moreover, Candidate is qualified to enter this primary election whether he is a qualified voter of Springfield or Leland Grove. Accordingly, Candidate's statement that he is a qualified voter of Springfield does not frustrate the purpose of his Statement of Candidacy pursuant to *Lewis*.

Additionally, even if Candidate is not properly registered to vote in Springfield, he has substantially complied with the requirements of Section 7-10. No evidence is presented that there is a single Illinois voter registered to vote at a Leland Grove address or that it is possible to be registered to vote at a Leland Grove address.¹³ Both Objector and Candidate submitted applications to the Sangamon County Clerk requesting registration to vote at a Leland Grove address, and both were registered to vote at a Springfield address.¹⁴ See Objector's Exhibits 2, 6 and 7; Candidate's Exhibit 1.

The Hearing Examiner recommends that the Board deny Objection 5 and find that the Candidate's Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

¹² See *supra*, Footnote 3.

¹³ See *supra*, Footnote 3.

¹⁴ See *supra*, Footnote 3.

2. Candidate's address and/or residence on his Nominating Petitions

In Objections 6, 7, 16 and 8, Objector asserts that Candidate's statements of his address as candidate and circulator on his Nominating Petitions are insufficient. For the following reasons, and again, in part, based on the unique set of facts in this matter, the Hearing Examiner recommends a finding that Candidate's statements of his address as candidate and circulator on his Nominating Petitions comply or substantially comply with Section 7-10.

- a. **Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at "2024 Greenbriar, Springfield, IL 62704". The address shown on the Candidate's Nominating Petitions is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petition contain such information and be in the form provided by the statute. The statute mandates that the petition sheets containing signatures "shall contain ... [the candidate's] place of residence". The failure to so state is insufficient at law and is factually a false statement. (Objection 6)**

Objector's Argument

Objector argues that Section 7-10 requires a candidate to state his place of residence on nominating petitions, rather than address, and that Candidate's Nominating Petitions do not comply with Section 7-10 because Candidate resides in Leland Grove, not Springfield.

Candidate's Argument

Candidate argues that his voter registration indicates Springfield. Candidate further argues that any error in stating Springfield as his place of residence on his Nominating Petitions is insignificant because both Springfield and Leland Grove are in the district in which Candidate is seeking to be placed on the ballot, such that the distinction between Springfield and Leland Grove is a technical distinction without a difference.

Analysis

The analysis herein is largely similar to the analysis of Objection 4, although it is noted and considered in the analysis herein that the alleged deficiency is on the Candidate's Nominating Petitions, whereas in Objection 4 the alleged deficiency is on the Candidate's Statement of Candidacy. *See supra* Part II.A.1.a. (Objection 4).

There is no dispute that Candidate's Nominating Petitions indicate that Candidate "resides at 2024 Greenbriar" in Springfield. *See* Exhibit L, pgs. 4-117. This Objection 6, as well as other subsequent objections that raise an issue with Candidate's address, residence and/or place of voter registration, dispute not the address itself but the description of the address.

Accordingly, the question becomes whether Candidate's uses of Springfield in his Nominating Petitions to state that Candidate resides in Springfield are in compliance or substantial compliance with Section 7-10.

Section 7-10 requires, in part, that "[e]ach sheet of the [nominating] petition ... shall contain ... an appropriate heading giving the information as to the ... place of residence" of the candidate. 10 ILCS 5/7-10. The Election Code does not define "address", "reside", "residence", "residence address"¹⁵, or "place of residence". See 10 ILCS 5/1-3; 10 ILCS 5/7-4; 10 ILCS 5/7-10.

Ryan supports Candidate's argument that the address stated in his Nominating Petitions is in substantial compliance with Section 7-10. In *Ryan*, the candidate's nominating papers did not contain the candidate's correct place of residence pursuant to Section 10-4 because the last digit of the address was mistyped. 159 Ill. App. 3d 10. The First District Appellate Court noted that the purpose of the address requirement in Section 10-4 is "to prevent a candidate from fraudulently running in an election when he does not reside in the political division involved in the election." *Id.* at 15. The court noted that the candidate resided in the political division involved in the election and allowed the candidate to remain on the ballot. *Id.* at 15.

The address used by Candidate in describing where Candidate resides is both his mailing address and his registered voter address.¹⁶ See Candidate's Exhibit 1. In addition, the discrepancy between Springfield and Leland Grove to indicate where Candidate resides does not refer to different addresses but are merely different descriptions of the same address. Again, this matter presents a very unique set of facts in both the relationship between Leland Grove and Springfield and the handling of voter registration by the Sangamon County Clerk. See *supra* Part II.A.1.a (Objection 4).

Further, and again, Candidate is in an obvious "Catch 22" because he would have been subject to challenge even if he stated Leland Grove on his Nominating Petitions. See *supra* Part II.A.1.a (Objection 4). The purpose of nominating petitions is "to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." *Salgado*, 356 Ill. App. 3d at 1079. Furthermore, the First District Appellate Court has specifically stated that the purpose of the requirement that nominating petitions set forth the candidate's address is "to prevent a candidate from fraudulently running in an election when he does not reside in the political division involved in the election." *Ryan*, 159 Ill. App. 3d at 15 (discussing Section 10-4). Candidate's indication that he resides in Springfield instead of Leland Grove on his Nominating Petitions does not frustrate the purpose of the Nominating Petitions or address requirement because it has no effect on Candidate's ability to demonstrate a minimal appeal to eligible voters and there is no dispute that Candidate resides in the political division involved in the election.

¹⁵ Section 7-10 defines "residence address" only with regard to qualified primary electors who sign nominating petitions. See *infra* Part II.A.2.b (Objection 7).

¹⁶ See *supra*, Footnote 3.

Based on the unique set of facts in this matter, the Hearing Examiner recommends that the Board deny Objection 6 and find that Candidate's Nominating Petitions are in compliance or substantial compliance with Section 7-10.

- b. **Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at "2024 Greenbriar, Springfield, IL 62704". The address shown on the candidate's Nominating Petitions does not indicate what county he resides in. The 7th Judicial Circuit is statutorily defined and comprised of six Illinois counties and the failure to indicate residency in one of those six counties is insufficient at law. (Objection 7)**

Objector's Argument

Objector argues that the template provided in Section 7-10 for nominating petitions requires a candidate to state the county in which he or she resides. Objector further argues that residence address is defined by Section 7-10 and that said definition includes county.

Candidate's Argument

Candidate argues that Section 7-10 requires nominating petitions to include a candidate's place of residence and that the template provided in Section 7-10 for nominating petitions contains address, not county. Candidate further argues that the definition of residence address in Section 7-10 applies to qualified primary electors who sign nominating petitions, not to candidates.

Analysis

Section 7-10 contains no express requirement that nominating petitions contain the county in which the candidate resides. *See* 10 ILCS 5/7-10. Section 7-10 requires that "[e]ach sheet of the [nominating] petition ... shall contain ... an appropriate heading giving the information as to the ... place of residence" of the candidate. 10 ILCS 5/7-10. The Election Code does not define "address", "reside", "residence", "residence address"¹⁷, or "place of residence". *See* 10 ILCS 5/1-3; 10 ILCS 5/7-4; 10 ILCS 5/7-10. Moreover, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form", and the template states, in part, "[a]ddress," and provides the examples of "Belvidere, Ill.", "Peoria, Ill.", and "Oakland, Ill." 10 ILCS 5/7-10.

Furthermore, although the residence address definition to which Objector refers does state that county shall be included, Section 7-10 specifies that the residence address is "required to be written or printed opposite each qualified primary elector's name". Accordingly, the specific requirements for residence address as defined by Section 7-10 are applicable only to qualified primary electors who sign nominating petitions, not the candidate, and Section 7-10 does not require that nominating petitions set forth a candidate's county.

¹⁷ Section 7-10 defines "residence address" only with regard to qualified primary electors who sign nominating petitions. *See infra* Part II.A.5 (Objection 17).

The Hearing Examiner recommends that the Board deny Objection 7 and find that Candidate's nominating petitions are in compliance with Section 7-10.

- c. **Your Objector states that the candidate has filed multiple Nominating Petition pages failing to indicate whether he lives in a "city, village [or] unincorporated area". The failure to so state is insufficient at law. (Objection 16)**

Objector's Argument

Objector argues that Candidate's nominating petitions do not comply with Section 7-10 because they state only that Candidate resides in Springfield and Section 7-10 requires that they state Candidate resides in the "*City of*" Springfield.

Candidate's Argument

Candidate argues that Section 7-10 does not require a candidate to indicate on his nominating petition whether he resides in a city, village or unincorporated area. Accordingly, Candidate argues that Objection 16 is hypertechnical and an attempt to elevate form over substance. Candidate further argues that even if Section 7-10 requires a candidate to indicate whether he resides in a city, village or unincorporated area, his nominating petitions are in substantial compliance because they state that he resides in Springfield.

Analysis

Section 7-10 contains no express requirement that nominating petitions indicate whether the candidate resides in a city, village or unincorporated area.¹⁸ See 10 ILCS 5/7-10. Section 7-10 requires that "[e]ach sheet of the [nominating] petition ... shall contain ... an appropriate heading giving the information as to the ... place of residence" of the candidate. 10 ILCS 5/7-10. The Election Code does not define "address", "reside", "residence", "residence address"¹⁹, or "place of residence". See 10 ILCS 5/1-3; 10 ILCS 5/7-4; 10 ILCS 5/7-10. Moreover, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form", and the template states, in part, "[a]ddress," and provides the examples of "Belvidere, Ill.", "Peoria, Ill.", and "Oakland, Ill." 10 ILCS 5/7-10.

The Hearing Examiner recommends that the Board deny Objection 16 and find that the nominating petitions are in compliance with Section 7-10.

- d. **Your Objector states that the candidate has filed multiple Nominating Petition pages indicating that he, as circulator, "do [sic] hereby certify that I reside at 2024 Greenbriar, in the City of Springfield, zip code 62704". The address shown on the candidate's Nominating Petitions is not within the corporate boundaries of the City**

¹⁸ Moreover, the references to "city, village or town" in Section 7-10 are within the requirements for the residence address that must be written or printed opposite the name of each qualified primary elector who signs a petition and to the requirements of the circulator's affidavit. See 10 ILCS 5/7-10.

¹⁹ Section 7-10 defines "residence address" only with regard to qualified primary electors who sign nominating petitions. See *supra* Part II.A.2.b (Objection 7).

of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the circulator's affidavit be in the form provided by the statute. The statute requires the circulator to "certify" his address. The failure to so state is insufficient at law and is factually a false affidavit made under oath. (Objection 8)

Objector's Argument

Objector argues that Candidate's statement on some of his Nominating Petitions that he, as circulator resides at "2024 Greenbriar" in Springfield, rather than Leland Grove, does not comply with the requirements of Section 7-10.

Candidate's Argument

Candidate argues that the address stated on the circulator's affidavit on some of his Nominating Petitions is in substantial compliance with Section 7-10 because the address exists and that he, as circulator, can be located by that address. Accordingly, Candidate argues that Objection 8 is an attempt to elevate form over substance. Candidate further argues that *Cunningham v. Schaefflein* and *Sakonyi* support his assertion that the address stated on the circulator's affidavit on some of his Nominating Petitions is in substantial compliance with Section 7-10. *Cunningham*, 2012 IL App (1st) 120529; *Sakonyi*, 261 Ill. App. 3d 821.

Analysis

Section 7-10 provides, in part, that each sheet of a candidate's nominating petitions "shall" contain a "circulator statement ... stating the street address or rural route number, as the case may be, as well as the county, city, village or town, and state", among other things, and that "[s]uch statement shall be sworn to before some officer authorized to administer oaths in this State." 10 ILCS 5/7-10. Moreover, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form", and the template states, in part, "I, ..., do hereby certify that I reside at No. street, in the of, county of, and State of" 10 ILCS 5/7-10.

The case law presented by Candidate supports his argument that the circulator's affidavit address on some of his Nominating Petitions is in substantial compliance with Section 7-10. In *Cunningham*, two digits in the number of the circulator's address were transposed in the circulator's affidavit address. 2012 IL App (1st) 120529 at ¶8 (listed as "9708 Emerson" and should have been listed as "9078 Emerson"). In determining that the circulator's "innocent, minor error" did not prevent the circulator from being located or jeopardize the integrity of the electoral process, the First District Appellate Court stated, "[T]he mistaken transposition of two digits in the address did not affect the substance or validity of the circulator's statement; listing the circulator's address is simply the method used by the Election Code to locate the circulator in the event he is needed to testify before an electoral board." *Id.* at ¶28. Candidate's use of Springfield instead of Leland Grove in his circulator's affidavit address on some of his Nominating Petitions does not affect the substance or validity of the circulator's statement. In *Sakonyi*, no address was stated in the circulator's affidavit on four of the five nominating

petitions filed pursuant to Section 28-3, a section analogous to Section 7-10 for petitions for public questions. 261 Ill. App. 3d at 824. The Fifth District Appellate Court stated that “[o]ne purpose of the address [in the circulator’s affidavit] is to protect the integrity of the electoral process by furnishing the circulator’s address which enables the Board to locate her, question her about the signatures, and hold her responsible for her oath,” and further explained that “the circulator’s affidavit requirement is considered a meaningful and realistic method of eliminating fraudulent signatures and protecting the integrity of the electoral process.” *Id.* at 825-26. The court determined that there was substantial compliance with the circulator’s address requirement because including the address on one nominating petition satisfied the purpose of protecting the integrity of the electoral process. *Id.* at 826. Here, Candidate’s use of Springfield instead of Leland Grove in his circulator’s affidavit address on some of his Nominating Petitions does not impact the integrity of the electoral process because Candidate, as a circulator, can still be located in the event he is called to testify and be questioned as circulator.

Additional Illinois case law further supports Candidate’s argument that his address stated on the circulator’s address on some of his Nominating Petitions is in substantial compliance with Section 7-10. In *Lucas v. Lakin*, the circulator’s affidavit address was not the address where the circulator was registered to vote. 175 Ill. 2d 166, 167 (1997). In noting both that circulators make a sworn statement that they are registered voters and that verifying voter registration of circulators is not as burdensome as verifying voter registration of individuals signing petitions, the Illinois Supreme Court determined that Section 7-10 does not require that the circulator’s affidavit address on nominating petitions be identical to the address where a circulator is registered to vote. *Id.* at 175-76. Here, Candidate is registered to vote in Springfield, as discussed further in the analysis of Objection 5.²⁰ *See supra* Part II.A.1.b (Objection 5). Moreover, even if Candidate is not properly registered to vote in Springfield, Candidate’s statement that he resides in Springfield in his circulator’s affidavit address does not rise to the level of stating a completely different address than the registered voter address in *Lucas*. In *Panarese v. Hosty*, the number and street of residence were omitted from the circulator’s affidavit address on one of five nominating petitions. 104 Ill. App. 3d 627, 628 (1st Dist. 1982). The First District Appellate Court determined that the circulator’s affidavit was in substantial compliance with Section 7-10 because there were only five pages of nominating petitions and the number and street of the circulator were included on four of five pages. *Id.* at 630. Candidate’s statement that he resides in Springfield in his circulator’s affidavit address is in substantial compliance with Section 7-10 because there is no dispute that Candidate actually resides at “2024 Greenbriar” and that “2024 Greenbriar” in Springfield and Leland Grove refer to the same physical residence and location.

Moreover, Candidate’s statement that he resides in Springfield on his circulator’s affidavit address does not frustrate the purpose of the circulator’s affidavit address “to protect the integrity of the electoral process by furnishing the circulator’s address which enables the Board to locate her, question her about the signatures, and hold her responsible for her oath.” *Sakonyi*, 261 Ill. App. 3d at 825-26. Candidate, as a circulator, can easily be located by the Board in the event that he is required to testify or be questioned as a circulator.

²⁰ *See supra*, Footnote 3.

The Hearing Examiner recommends the Board deny Objection 8 and find that the circulator's affidavit contained in Candidate's Nominating Petitions for which Candidate is the circulator is in compliance or substantial compliance with the requirements of Section 7-10.

3. Candidate's Motion to Dismiss the Verified Objector's Petition

In his Motion to Strike and Dismiss, Candidate argues that the Verified Objector's Petition must be dismissed because Objector's statement of where he resides and is a legal voter in the Verified Objector's Petition is insufficient. For the following reasons, and again based on the unique set of facts in this matter, the Hearing Examiner recommends a finding the Objector's statement of where he resides and is a legal voter in his Verified Objector's Petition substantially complies with Section 10-8.²¹

a. Candidate's Motion to Dismiss the Verified Objector's Petition

Candidate's Argument

Candidate argues that the entire Verified Objector's Petition must be dismissed because as Objector is not a legal voter at the Leland Grove address at which he swears to reside in the Verified Objector's Petition, Objector does not have standing to bring an objection pursuant to and has failed to satisfy the requirements of Section 10-8. Candidate further argues that even if Objector resides in Leland Grove, he is registered to vote in Springfield. Candidate further argues that *Pochie v. Cook County Officers Electoral Board* supports his assertion that Objector's statement of his address in the Verified Objector's Petition is insufficient pursuant to Section 10-8. 289 Ill. App. 3d 585 (1st Dist. 1997).

Objector's Argument

Objector argues that there is a distinction between mailing address and property location and that mailing address is irrelevant because mail will be delivered to an address regardless of the city listed. Objector further argues that his various exhibits demonstrate that his political subdivision is Leland Grove. *See generally* Objector's Exhibits. Objector further argues that *Miles v. Calumet City Officers' Electoral Board* supports his assertion that the proper municipality must be designated in an objection. 288 Ill. App. 3d 1096 (1st Dist. 1997).

Analysis

Section 10-8 states, in part, that an objection to a petition for nomination may only be filed by "[a]ny legal voter of the political subdivision or district in which the candidate ... is to be voted on...." 10 ILCS 5/10-8. Section 10-8 further requires an objector to "give" his "residence address." 10 ILCS 5/10-8.

The case cited by Candidate is distinguishable from this matter. In *Pochie*, the objector listed only his street number and not his street name on his objector's petition pursuant to Section

²¹ Section 7-12.1 expressly adopts Section 10-8 through 10-10.1 with respect to objections to petitions for nomination filed under Article 7. *See* 10 ILCS 5/7-12.1.

10-8. 289 Ill. App. 3d at 586. The First District Appellate Court noted that courts have upheld petition signatures where “the identity of the registered voter can readily be determined from the address provided notwithstanding technical noncompliance with the Election Code.” *Id.* at 587 (citing *Board of Education of Wapella Community Unit School District No. 5, De Witt County, Illinois*, 247 Ill. App. 3d 555).²² Accordingly, the court dismissed the objector’s petition because the objector’s address could not be readily determined without a street address. *Id.* at 587. Here, Objector’s address can be readily determined from the address listed in his Verified Objector’s Petition.

Objector did not provide the circuit court opinion which was affirmed, without comment or analysis, by the First District Appellate Court in *Miles*, and the Hearing Examiner was unable to locate said circuit court opinion. 288 Ill. App. 3d 1096 (affirming without comment or analysis).

Although Objector asserts that his application for transfer of registration is particularly instructive to demonstrating that Leland Grove was properly stated as his correct political subdivision, Objector concedes that his voter registration does not state “Leland Grove” and in fact states “Springfield” as Objector’s city and in his mailing address.²³ See Objector’s Exhibits 2 and 7.

There is no dispute that the Verified Objector’s Petition states that Objector “resides ... and is a legal ... voter” of Leland Grove. See Verified Objector’s Petition, ¶ 1. However, Objector’s registered voter address is in Springfield.²⁴ See Objector’s Exhibit 2; Candidate’s Exhibit 1. In addition, the discrepancy between Springfield and Leland Grove to indicate where Objector resides does not refer to different residences but are merely different descriptions of the same residence.

Like the objections raised with respect to Candidate’s address and/or residence, this matter presents a very unique set of facts in both the relationship between Leland Grove and Springfield and the handling of voter registration by the Sangamon County Clerk. First, “Leland Grove” and “Springfield” are truly used interchangeably by both area residents and local government officials. See generally Candidate’s Exhibits and Objector’s Exhibits. Springfield surrounds Leland Grove, and Leland Grove does not have its own post office. Second, no evidence is presented that there is a single Illinois voter registered to vote at a Leland Grove address or that it is possible to be registered to vote at a Leland Grove address. Both Objector and Candidate submitted applications to the Sangamon County Clerk requesting registration to vote at a Leland Grove address, and both were registered to vote at a Springfield address. See Objector’s Exhibits 2, 6 and 7; Candidate’s Exhibit 1.

The Hearing Examiner recommends the Board deny Candidate’s motion to dismiss the Verified Objector’s Petition and find that the Verified Objector’s Petition is in compliance or substantial compliance with the requirements of Section 10-8.

²² *Board of Education of Wapella Community Unit School District No. 5, De Witt County, Illinois* is further discussed supra in Part II.A.1.

²³ See supra, Footnote 3.

²⁴ See supra, Footnote 3.

It is important to note the relationship between Objector's objections regarding Candidate's address, residence, and/or place of voter registration and the portion of Candidate's motion to dismiss regarding Objector's address, residence, and/or place of voter registration. In the event that the Board disagrees with the Hearing Examiner and determines that Objector's objections regarding Candidate's address, residence, and/or place of voter registration should be sustained, the Board must also determine that Candidate's motion to dismiss Objector's Verified Petition should be granted as a result of Objector's address, residence, and/or place of voter registration.

B. Candidate's description of the office he seeks

1. Candidate's description of the office he seeks on his Statement of Candidacy

In Objection 9, Objector asserts that Candidate's description of the office he seeks on his Statement of Candidacy is insufficient. For the following reasons, the Hearing Examiner recommends a finding that Candidate's description of the office he seeks on his Statement of Candidacy complies or substantially complies with Section 7-10.

- a. **Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate." The failure to so state is insufficient at law. (Objection 9)**

Objector's Argument

Objector argues that the Illinois Supreme Court certification provides that the vacancy is the vacancy of the Honorable Leo J. Zappa, Jr. and that Candidate's Statement of Candidacy does not comply with Section 7-10 because it does not state that Candidate is seeking the vacancy of the Honorable Leo J. Zappa, Jr. Objector further argues that there is a basis for confusion from the description of the office sought in Candidate's Statement of Candidacy because there are two 7th Circuit judgeship vacancies and one 4th District judgeship vacancy available at the upcoming primary. Objector further argues that *Zapolsky v. Cook County Officers Electoral Board* and *Salgado* support his assertion that Candidate does not sufficiently describe the office sought.²⁵ *Salgado*, 356 Ill. App. 3d 1072; *Zapolsky*, 296 Ill. App. 3d 731 (1st Dist. 1998). Objector further argues that Candidate incorrectly describes the office sought because 7th Judicial District does not exist.²⁶

²⁵ Because both *Zapolsky* and *Salgado* refer to deficiencies in office descriptions in nominating papers and focus on the purpose of nominating papers, they are distinguishable from this matter in relation to Objection 9 and will be discussed in the analysis of Objection 11. See *infra*, Part II.B.2.a (Objection 11).

²⁶ Although Objection 9 in Objector's Verified Objector's Petition does not specifically raise Candidate's indication of 7th Judicial District, it is raised in Objection 13. Therefore, and because Objector discussed it during the January 2, 2014 hearing, it will be discussed herein to evaluate the sufficiency of Candidate's office description in his Statement of Candidacy.

Candidate's Argument

Candidate argues that because his Statement of Candidacy specifies that he resides in Sangamon and the second 7th Circuit judgeship that is available at the upcoming primary election is not in Sangamon County, there is no basis for confusion from the description of the office sought in his Statement of Candidacy. Candidate further argues that *Lewis* and *Sullivan v. The County Officers Electoral Board of Du Page County* support his assertion that there is no conflict between his Statement of Candidacy and Nominating Petitions or basis of confusion from the office stated in his Statement of Candidacy and that he has substantially complied with Section 7-10. *Lewis*, 63 Ill. 2d 48; *Sullivan*, 225 Ill. App. 3d 691 (2nd Dist. 1992).

Analysis

Objection 9 requires a two-part analysis: (1) whether Section 7-10 requires a candidate's office description to include vacancy and/or district; and (2) if Section 7-10 requires a candidate's office description to include vacancy and/or district, whether Candidate's office description substantially complies with Section 7-10.

Part one of the analysis is whether Section 7-10 requires a candidate's office description to include vacancy and/or district.

Section 7-10 requires that a candidate's statement of candidacy set forth the "office for which he is a candidate," among other things. 10 ILCS 5/7-10. However, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form". The template includes, in part, the candidate's "Office" and "District". 10 ILCS 5/7-10.

The case law cited by Objector, as well as other Illinois case law, implies that a candidate must specify the vacancy he is seeking as part of the Section 7-10 requirements that the statement of candidacy and nominating petitions must state the office sought. *See, e.g., Lewis*, 63 Ill. 2d 48; *Samuelson*, 2012 IL App (1st) 120581; *Pascente v. County Officers Electoral Board of the County of Cook*, 373 Ill. App. 3d 871 (1st Dist. 2007); *Salgado*, 356 Ill. App. 3d 1072; *Haebler v. Municipal Officers Electoral Board*, 338 Ill. App. 3d 1059 (2nd Dist. 2003); *Requena v. Cook County Officers Electoral Board*, 295 Ill. App. 3d 728 (1st Dist. 1998); *Zapolsky*, 296 Ill. App. 3d 731; *Sullivan*, 225 Ill. App. 3d 691; *Jones v. Municipal Officers Electoral Board*, 112 Ill. App. 3d 926 (1st Dist. 1983). However, a review of Section 7-10 reveals that Section 7-10 contains no such requirement. The plain wording of Section 7-10 requires only that the candidate's statement of candidacy contain the "office for which he is a candidate" and does not require that a candidate's statement of candidacy contain the district or vacancy sought. Section 7-10 does not contain the word "vacancy." *See* 10 ILCS 5/7-10.

The Election Code does not define "office" or "judicial office". The Illinois Constitution designates the office as "Circuit Judge". Ill. Const. art. VI, § 7. Accordingly, Candidate has sufficiently described the office sought in his Statement of Candidacy and Nominating Petitions pursuant to Section 7-10 and the Illinois Constitution.

Objector argues in other objections regarding the correct statement of Candidate's office sought that the State Board of Election's Candidate's Guide (hereinafter the "Candidate's Guide") requires a candidate to "state the exact vacancy or the exact additional judgeship that the candidate is seeking".²⁷ However, the Candidate's Guide itself expressly states, "Legal information contained in this guide is not binding and should not be construed as sufficient argument in response to an objection to any candidate's nominating papers. The State Board of Elections recommends that all prospective candidates consult with competent legal counsel when preparing their nominating papers." State Board of Elections, State of Illinois Candidate's Guide 2014 (amended Nov. 26, 2013), "Preface".

Accordingly, the Hearing Examiner recommends the Board deny Objection 9 because Candidate's Statement of Candidacy complies with Section 7-10.

Part two of the analysis is whether, if Section 7-10 requires a candidate's office description to include vacancy and/or district, Candidate's office description substantially complies with Section 7-10. Even if Section 7-10 requires a candidate's office description to include vacancy and/or district, the Hearing Examiner recommends the Board deny Objection 4 because Candidate's Statement of Candidacy substantially complies with the requirements of Section 7-10.

Candidate's nominating papers, when read together, make clear that he is seeking the office of Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa. *See* Exhibit L. Candidate's failure to include Jr. and thus specify that he is seeking the vacancy of the Honorable Leo J. Zappa, Jr. does not prevent substantial compliance, as Objector specifically claims in Objection 11. *See infra*, Part II.B.2.a (Objection 11). Furthermore, Candidate's statement on his Statement of Candidacy that he is seeking the office of Circuit Judge in the district of the 7th Judicial District does not prevent substantial compliance because Candidate's Nominating Petitions state that he is seeking office in the 7th Judicial Circuit. *See* Exhibit L.

Moreover, Candidate's indication in his Statement of Candidacy that he is seeking the office of "Circuit Judge" in the "7th Judicial District" and failure to state that he is seeking the "vacancy of the Honorable Leo J. Zappa, Jr." satisfies the two-part test set forth by the Illinois Supreme Court in *Lewis* for determining whether a candidate has substantially complied with Section 7-10 in stating the office sought. 63 Ill. 2d 48.

The *Lewis* two-part test is as follows: "First, the nominating papers as a whole must not create a basis for confusion as to the office sought. Second, the purpose of the nominating paper that contains the incorrect office must not have been frustrated because of the error." *Salgado*, 356 Ill. App. 3d at 1079 (*referencing Lewis*, 63 Ill. 2d at 52-53). In determining whether there is a basis for confusion as to the office sought, courts consider whether there is a "conflict or

²⁷ The Verified Objector's Petition references the State Board of Election's Candidate's Guide only with reference to Objections 12 and 13, but Objector made reference to the Candidate's Guide throughout the January 2, 2014 hearing.

inconsistency” between the description of the office in the statement of candidacy and nominating papers. *Lewis*, 63 Ill. 2d at 53; *Salgado* 356 Ill. App. 3d at 1079.

Under part one of *Lewis*, there is no basis for confusion from Candidate’s nominating papers as a whole. First, there is no conflict or inconsistency between the description of the vacancy of the office sought in Candidate’s Statement of Candidacy and Nominating Petitions because Candidate’s Statement of Candidacy omits the vacancy. *See Salgado*, 356 Ill. App. 3d at 1079 (the candidate’s nominating petitions omitted the office).²⁸ Second, there is no conflict or inconsistency between the description of the district of the office sought in Candidate’s Statement of Candidacy and Nominating Petitions because any conflict between the Statement of Candidacy, on its face, and the Nominating Petitions, on its face, is “readily resolved” because there is no 7th Judicial District in Illinois. *See Sullivan*, 225 Ill. App. 3d 691.²⁹

Furthermore, there is no basis for confusion as to the office sought by Candidate. First, there is no basis for confusion as to the vacancy of the office sought because there is only one possible vacancy of Leo J. Zappa. *See Pascente*, 373 Ill. App. 3d 871.³⁰ *See also infra*, Part II.B.2.a (Objection 11). Second, there is no basis for confusion as to the district of the office sought because 7th Judicial District is only stated on the Statement of Candidacy, which is not the document generally viewed by eligible voters and petition signatories. Candidate’s Nominating Petitions state, and his nominating papers when read together make clear, that Candidate is seeking the office of “Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa.” *See Exhibit L*.

Under part two of *Lewis*, the purpose of the statement of candidacy is “to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks.” *Lewis*, 63 Ill. 2d at 53 (1976). Candidate’s indication in his Statement of Candidacy that he is seeking the office of Circuit Judge in the 7th Judicial District and failure to state that he is seeking the vacancy of the Honorable Leo J. Zappa, Jr. do not frustrate the purpose of the statement of candidacy because there is no distinction between Candidate’s qualifications for the office sought as stated by Candidate and Candidate’s qualification for the office sought as “Judge of the Circuit Court, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa, Jr.,” as Objector claims is the exact and correct office sought.

²⁸ *Salgado* is further discussed in this Part and in Part II.B.2.a (Objection 11).

²⁹ Discussed further in this Part.

³⁰ In *Pascente*, the nominating petitions stated the office sought at “Member of the Regional Board of School Trustees” instead of township trustee of schools. 373 Ill. App. 3d at 872. The First District Appellate Court noted, “If nominating papers describe only one possible vacancy in that district, then there is no basis for confusion. When the description could include more than once vacancy in that district, there is then a basis for confusion.” *Id.* at 874. Because there were only two possible offices and one office was abolished 15 years before, the court determined that there was “no question which of the two offices [the candidate] was seeking, because one office did not exist.” *Id.* at 874. Objector asserts that there are two vacancies available in the 7th Judicial Circuit. However, the second vacancy to which Objector refers is that of the resident judge of Morgan County. *See Candidate’s Exhibit 1*. Candidate is not qualified to seek the position of resident judge of Morgan County because he resides in Sangamon County, which is stated on his Statement of Candidacy. *See Exhibit K*, pg. 1.

Albeit in a different context, the Second District Appellate Court touched on differences between offices in *Salgado*: “at a minimum, offices differ in type when the duties that they entail differ.” 356 Ill. App. 3d at 1079.³¹ In *Salgado*, the court noted differences in duties between the offices of mayor and alderman. *Id.* Here, there is no difference in the duties of Circuit Judge in the 7th Judicial District and “Judge of the Circuit Court, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa, Jr.,” as Objector claims is the exact and correct office sought.

In addition, the case law cited by Candidate supports his assertion that his office descriptions are in substantial compliance with Section 7-10. *Lewis*, 63 Ill. 2d 48; *Sullivan*, 225 Ill. App. 3d 691.

In *Lewis*, the statement of candidacy did not describe the particular vacancy sought. *Id.* at 49-50. The Illinois Supreme Court noted that the purpose of a statement of candidacy is “to obtain a sworn statement from the candidate establishing his qualifications to enter the primary election for the office he seeks.” *Id.* at 53. In finding substantial compliance with the requirement that the candidate must describe the particular vacancy sought in the statement of candidacy, the Illinois Supreme Court noted, “we perceive no difference in the qualifications for ‘Judge of the Appellate Court, First Judicial District,’ and ‘Judge of the Appellate Court, First Judicial District, to fill the vacancy created by the retirement of the Honorable Robert E. English.’” *Id.* at 53. Here, like in *Lewis*, Objector asserts that the office description is insufficient. Again, Candidate’s indication in his Statement of Candidacy that he is seeking the office of Circuit Judge in the 7th Judicial District and failure to state that he is seeking the vacancy of the Honorable Leo J. Zappa, Jr. does not frustrate the purpose of the statement of candidacy because there is no distinction between Candidate’s qualifications for the office sought as stated by Candidate and Candidate’s qualification for the office sought as “Judge of the Circuit Court, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa, Jr.,” as Objector claims is the exact and correct office sought. Although, unlike *Lewis*, this matter also involves an alleged deficiency in Candidate’s Nominating Petitions, Candidate’s Nominating Petitions state 7th Judicial Circuit and the remaining alleged defects of omitting Jr. from the vacancy sought and stating “Circuit Judge” instead of “Judge of the Circuit Court” will be addressed and determined not to defeat substantial compliance. See *infra*, Part II.B.2.a (Objection 11) and Part II.B.2.b (Objection 14). Accordingly, *Lewis* supports a finding of substantial compliance.

In *Sullivan*, the statement of candidacy erroneously listed the office sought pursuant to Section 7-10 as precinct committeeman for precinct 129 of “Oak Brook Township”, while the nominating petitions correctly listed the office sought as precinct committeeman for precinct 129 of “York Township”. 225 Ill. App. 3d at 692. The Second District Appellate Court noted, “There is no Oak Brook Township. Precinct 129 of York Township is, however, located in the Village of Oak Brook.” *Id.* at 693. The court further noted that although, unlike *Lewis*, the statement of candidacy conflicted with the nominating petition on its face, the conflict was “readily resolved in light of the fact that there is no Oak Brook Township.” *Id.* at 694. Accordingly, *Sullivan* supports a finding of substantial compliance.

³¹ *Salgado* is further discussed in Part II.B.2.a (Objection 11).

The Hearing Examiner recommends the Board deny Objection 9 and find that Candidate's Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

2. Candidate's description of the office he seeks on his Nominating Petitions

In Objections 11 and 14, Objector asserts that Candidate's description of the office he seeks on his Nominating Petitions is insufficient. For the following reasons, the Hearing Examiner recommends a finding that Candidate's description of the office he seeks on his Nominating Papers complies or substantially complies with Section 7-10.

- a. **Your Objector states that the candidate has filed Nominating Petitions which identify the judicial vacancy he is seeking as that of "Leo J. Zappa". The Chief Justice of the Illinois Supreme Court Certified [sic] the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The failure to so state is insufficient at law. (Objection 11)**

Objector's Argument

Objector argues that Candidate's Nominating Petitions do not comply with Section 7-10 because Candidate states the vacancy sought as that of Leo J. Zappa instead of Leo J. Zappa, Jr. and that Leo J. Zappa is a different person than Leo J. Zappa, Jr. Objector further argues that *Zapolsky* and *Salgado* support his assertion that Candidate does not sufficiently describe the office sought.³² *Salgado*, 356 Ill. App. 3d 1072; *Zapolsky* 296 Ill. App. 3d 731.

Candidate's Argument

Candidate argues that his description of the vacancy sought is sufficient because there is no confusion, as there is no evidence that Leo J. Zappa, Sr. has also ever held judicial office so as to render a vacancy. Candidate further argues that *Courtney* and *Panarese* support his position that his description of the vacancy sought substantially complies with Section 7-10. *Courtney*, 314 Ill. App. 3d 870; *Panarese*, 104 Ill. App. 3d 627.

Analysis

The analysis of this objection is largely similar to the two-part analysis presented above with respect to Objection 9. *See supra*, Part II.B.1.a (Objection 9). The distinction is that unlike the Statement of Candidacy, which does not describe the vacancy sought, Candidate's Nominating Petitions describe the vacancy sought as that of "the Honorable Leo J. Zappa" and omit only "Jr." from the description of the office. *See Exhibit L*. Moreover, Candidate's Nominating Petitions correctly identify the 7th Judicial Circuit. *See Exhibit L*.

³² Because both *Zapolsky* and *Salgado* refer to deficiencies in office descriptions in nominating papers and focus on the purpose of nominating papers, they are discussed herein.

Part one of the analysis is whether Section 7-10 requires a candidate's office description to include vacancy and/or district.

Again, Candidate has sufficiently described the office sought in his Statement of Candidacy and Nominating Petitions pursuant to Section 7-10 and the Illinois Constitution, and the Candidate's Guide is not binding on candidates. *See supra*, Part II.B.1.a (Objection 9). Accordingly, the Hearing Examiner recommends the Board deny Objection 11 because Candidate has complied with Section 7-10.

Part two of the analysis is whether, if Section 7-10 requires a candidate's office description to include vacancy and/or district, Candidate's office description substantially complies with Section 7-10. Even if Section 7-10 requires a candidate's office description to include the vacancy and/or district, the Hearing Examiner recommends the Board deny Objection 11 because Candidate's Nominating Petitions substantially comply with the requirements of Section 7-10. *See supra*, Part II.B.1.a (Objection 9).

First, Candidate's nominating papers, when read together, make clear that he is seeking the office of Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa. *See Exhibit L*. Second, Candidate's indication in his Nominating Petitions that he is seeking the office of "Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa" satisfies the *Lewis* two-part test. 63 Ill. 2d 48. *See Exhibit L*. There is not a basis for confusion in the description of the office sought, despite the omission of "Jr." and there is no conflict or inconsistency between the Statement of Candidacy and Nominating Petitions as a result of such omission. *See Morton v. State Officers Electoral Board*, 311 Ill. App. 3d 982 (4th Dist. 2000).³³ Moreover, the omission of "Jr." does not frustrate the "primary purpose" of nominating petitions "to reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." *Salgado*, 356 Ill. App. 3d at 1079. The omission of "Jr." from the office Candidate is seeking could not reasonably have an impact on Candidate's minimal appeal to eligible voters.

The case law cited by Candidate supports his assertion that mandatory requirements of the Election Code can be satisfied by substantial compliance, *See Courtney*, 314 Ill. App. 3d 870 (finding a candidate that filed his statement of candidacy and nominating petitions separately but timely had substantially complied with the Election Code); *Panarese*, 104 Ill. App. 3d 627 (finding substantial compliance when one of five of a candidate's nominating petitions omitted the number and street of residence from the circulator's affidavit address because the petition had

³³ In *Morton*, the Fourth District Appellate Court stated, "Suffixes such as 'Junior' or 'Jr.' or words of similar import are ordinarily not part of a person's name and it is normally not necessary to add it to a name in a legal document. (citations omitted). In addition, where the only difference between two names is the addition of a suffix such as 'Sr.' or 'Jr' to one of them, they have been presumed to refer to the same person until the contrary is alleged and provide." 311 Ill. App. 3d at 985. Albeit in a different context, it is clear under Illinois law that the omission of the suffix "Jr" was not of such importance to preserve the electoral process that the court would strike an objection for lack of standing. Similarly in this case, the omission of the suffix "jr" in describing the office does not rise to the level of removing Candidate from the ballot. There is no evidence that any person named "Leo J. Zappa" with any other type of suffix be it "Sr.", or "II", "III", held a position as a Circuit Judge in the 7th Judicial Circuit that would cause confusion as to which vacancy Candidate sought.

only five pages and the number and street of the circulator's address were included on all but one page).³⁴

On the other hand, the case law cited by Objector is distinguishable. In *Zapolsky*, the candidate's nominating papers did not identify the vacancy sought. 296 Ill. App. 3d at 732. Distinguishing *Lewis*, the First District Appellate Court noted that nominating petitions and the statement of candidacy serve different purposes, that the purpose of nominating petitions is "to expand the informed participation of members of the respective parties in their primary election," and that "[a] potential signatory to a nominating petition has the right to know the specific vacancy sought by the candidate so that the signatory may make an informed decision to sign the petition or support another candidate for the same petition." *Id.* at 734. Accordingly, the court determined that because the candidate's nominating petition did not inform voters of the specific vacancy sought and numerous vacancies were available, the nominating petitions did not comply with Section 7-10. *Id.* at 734-35. However, the Second District Appellate Court criticized *Zapolsky* in *Haebler* and specifically stated that the purpose of nominating petitions is not "informed participation" as stated in *Zapolsky* but rather to "reduce the electoral process to manageable proportions by confining ballot positions to a relatively small number of candidates who have demonstrated initiative and at least a minimal appeal to eligible voters." 338 Ill. App. 3d at 1062. Because *Zapolsky* wrongly set forth the purpose of nominating petitions, it provides no support for Objector. In *Salgado*, the statement of candidacy correctly indicated the office sought while none of the nominating petitions contained any indication of the office sought. 356 Ill. App. 3d at 1074. The Second District Appellate Court determined that the description of the office sought was insufficient pursuant to *Lewis* because the candidate had not demonstrated minimal appeal to voters, which is the primary purpose of nominating petitions, when nominating petitions contained no indication of the office sought by the candidate. *Id.* at 1079. In considering minimal appeal, the court noted that mayor and alderman, the two offices for which the candidate could have been running, had different duties. *Id.* at 1079 ("[A]t a minimum, offices differ in type when the duties that they entail differ."). Here, Candidate's Nominating Petitions state, and his nominating papers when read together make clear, that Candidate is seeking the office of "Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa." See Exhibit L. Candidate's Nominating Petitions are the documents actually seen by voters and signatories.

The Hearing Examiner recommends the Board deny Objection 11 and find that the Candidate's Nominating Petitions are in compliance or substantial compliance with Section 7-10.

- b. **Your Objector states that the candidate has filed multiple Nominating Petition pages describing the office sought in the heading of the petition as both "Circuit Court Judge" and, directly below, as "Circuit Judge". The Judicial Candidate Packet provided by the Illinois State Board of Elections, indicates that the correct description of the office is that of "Judge of the Circuit Court". The failure to so correctly describe is insufficient at law. (Objection 14)**

³⁴ *Panarese* is further discussed in Part II.A.2.d (Objection 8).

Objector's Argument

Objector argues that Candidate's statement of Circuit Court Judge and Circuit Judge in his Nominating Petitions do not comply with Section 7-10 because the Candidate's Guide describes the office as Judge of the Circuit Court.

Candidate's Argument

Candidate argues that Objection 14 raises a distinction without a difference and that such distinction is hypertechnical. Candidate further argues that the statement of Circuit Court Judge and Circuit Judge does not provide a basis for confusion.

Analysis

Again, Candidate has sufficiently described the office sought in his Statement of Candidacy and Nominating Petitions pursuant to Section 7-10 and the Illinois Constitution, which designates the office as "Circuit Judge." *See supra*, Part II.B.1.a (Objection 9). Moreover, the Candidate's Guide is not binding on candidates. *See supra*, Part II.B.1.a (Objection 9).

The Hearing Examiner recommends the Board deny Objection 14 and find that the Candidate's Nominating Papers are in compliance or substantial compliance with Section 7-10.

3. Candidate's description of the office he seeks on his Nominating Petitions and Statement of Candidacy

In Objections 12 and 13, Objector asserts that Candidate's descriptions of the office he seeks on his Nominating Petitions and Statement of Candidacy are insufficient. For the following reasons, the Hearing Examiner recommends a finding that the Candidate's descriptions of the office he seeks on his Nominating Petitions and Statement of Candidacy comply or substantially comply with Section 7-10.

- a. **Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the judicial vacancy being sought by the candidate differently. The Illinois Supreme Court Certified [sic] the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, [sic] states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." Neither document correctly sets out the "exact vacancy ... the candidate is seeking". The failure to so is [sic] insufficient at law. (Objection 12)**

Objector's Argument

Objector argues that because the Illinois Supreme Court has certified the vacancy sought by Candidate as that of Leo J. Zappa, Jr., Candidate's descriptions of the vacancy sought in his Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10, and further that the two descriptions themselves differ. Objector again further argues that *Zapolsky* and *Salgado* support his assertion that Candidate does not sufficiently describe the office sought. *Salgado*, 356 Ill. App. 3d 1072; *Zapolsky*, 296 Ill. App. 3d 731.

Candidate's Argument

Candidate argues the descriptions of the vacancy sought in his Statement of Candidacy and Nominating Petitions are sufficient pursuant to *Lewis* and *Sullivan*. *Lewis*, 63 Ill. 2d 48; *Sullivan*, 225 Ill. App. 3d 691. Candidate further argues that this objection raises only semantics.

Analysis

Objection 12 raises several objections regarding Candidate's description of the vacancy of the office he is seeking in his Statement of Candidacy and Nominating Petitions.

First, Objection 12 asserts, like Objections 9 and 11, that Candidate's Statement of Candidacy and Nominating Petitions individually fail to comply with Section 7-10 because the description of the vacancy of the office sought contained in each is insufficient. Accordingly, the analysis contained in reference to Objections 9 and 11 is applicable and will not be repeated herein. *See supra*, Part II.B.1.a (Objection 9) and Part II.B.2.a (Objection 11).

Second, Objection 12 asserts that Candidate's Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10 because they describe the vacancy of the office sought differently. Again, there is no basis for confusion from or conflict between Candidate's Statement of Candidacy and Nominating Papers. *See supra*, Parts II.B.1.a (Objection 9) and II.B.2.a (Objection 11). Candidate's nominating papers, when read together, clearly indicate that Candidate is seeking the office of Circuit Judge for the 7th Judicial Circuit to fill the vacancy of Leo J. Zappa. *See supra*, Parts II.B.1.a (Objection 9) and II.B.2.a (Objection 11).

Third, Objection 12 asserts that Candidate's Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10 because the exact office sought, including district and vacancy, is not contained anywhere in Candidate's nominating papers. Objector cites to the Candidate's Guide for the proposition that the "exact vacancy" must be set forth. However, the Candidate's Guide is not legally binding. *See supra*, Part II.B.1.a (Objection 9).

Objector cites, and the Hearing Examiner knows of, no authority for Objector's assertion that the "exact vacancy" must be set forth somewhere in Candidate's nominating petitions. In *Haebler*, the Second District Appellate Court stated, "[u]nder *Lewis*, a candidate must make clear the office that he seeks somewhere in his nominating papers." 338 Ill. App. 3d at 1063 ("We do not find the rule unduly burdensome such that we need qualify it today."). Again, Candidate's Nominating Petitions state, and his nominating papers when read together make clear, that

Candidate is seeking the office of "Circuit Judge, of the State of Illinois, for the 7th Judicial Circuit, to fill the vacancy of the Honorable Leo J. Zappa." *See* Exhibit L. As has already been addressed, the omission of "Jr." and statement of "Circuit Judge" instead of "Judge of the Circuit Court" do not defeat substantial compliance. *See supra*, Part II.B.2.a (Objection 11) and Part II.B.2.b (Objection 14).

The Hearing Examiner recommends the Board deny Objection 12 and find that the Candidate's Statement of Candidacy and Nominating Petitions are in compliance or substantial compliance with Section 7-10.

- b. **Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the district of the judicial vacancy being sought by the candidate differently. The candidate described the vacancy as being in the "7th Judicial District" on his Statement of Candidacy (in two places) and as being in the "7th Judicial Circuit" on his nominating petitions. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out ... the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, [sic] states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." The candidate's documents set out two different vacancies and not the "exact vacancy ... the candidate is seeking". The failure to so state is insufficient at law. (Objection 13)**

Objector's Argument

Objector argues that Candidate's descriptions of the vacancy sought in his Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10 because they differ from the Illinois Supreme Court certification of the vacancy sought, and further that the two descriptions themselves differ. Objector further argues that there is a distinction between districts for appellate districts and circuits for circuit courts and that there are two circuit court vacancies and one appellate district vacancy available at the upcoming primary election. Objector again further argues that *Zapolsky* and *Salgado* support his assertion that Candidate does not sufficiently describe the office sought. *Salgado*, 356 Ill. App. 3d 1072; *Zapolsky*, 296 Ill. App. 3d 731. Objector further argues that *Lewis* is significantly distinguishable from this matter. 63 Ill. 2d 48.

Candidate's Argument

Candidate argues that the Candidate's Guide has no force of law. Candidate further argues that his Statement of Candidacy and Nominating Petitions are in substantial compliance with Section 7-10 pursuant to *Lewis* and its progeny, which favor ballot access for candidates.

Analysis

Objection 13 raises several objections regarding Candidate's description of the district in which he is seeking office in his Statement of Candidacy and Nominating Petitions.

First, Objection 13 asserts that Candidate's Statement of Candidacy individually fails to comply with Section 7-10 because the description of the district in which he is seeking office contained is insufficient.³⁵ Specifically, Objection 13 objects to the statement of "7th Judicial District" in Candidate's Statement of Candidacy. Accordingly, the analysis contained in reference to Objection 9 is applicable and will not be repeated herein. *See supra*, Part II.B.1.a (Objection 9).

Second, Objection 13 asserts that Candidate's Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10 because they describe the district in which he is seeking office differently. Again, there is no basis for confusion from or conflict between Candidate's Statement of Candidacy and Nominating Papers. *See supra*, Parts II.B.1.a (Objection 9). Candidate's nominating papers, when read together, clearly indicate that Candidate is seeking the office of Circuit Judge for the 7th Judicial Circuit to fill the vacancy of Leo J. Zappa. *See supra*, Parts II.B.1.a (Objection 9).

Third, Objection 13 asserts, like Objection 12, that Candidate's Statement of Candidacy and Nominating Petitions fail to comply with Section 7-10 because the exact office sought, including district and vacancy, is not contained in Candidate's nominating papers. Accordingly, the analysis contained in reference to Objections 12 is applicable and will not be repeated herein. *See supra*, Part II.B.3.a (Objection 12).

The Hearing Examiner recommends the Board deny Objection 13 and find that the Candidate's Nominating Petitions and Statement of Candidacy are in compliance or substantial compliance with Section 7-10.

4. Candidate's description of the office he seeks on his Statement of Economic Interests

In Objection 10, Objector asserts that Candidate's description of the office he seeks on his Statement of Economic Interests is insufficient. For the following reasons, the Hearing Examiner recommends a finding that the Candidate's description of the office he seeks on his Statement of Economic Interests complies or substantially complies with Section 7-12(8).

- a. Your Objector states that the candidate has filed a Statement of Economic Interests which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The failure to so state is insufficient at law. (Objection 10)**

³⁵ Objector uses "district of the vacancy," but the Hearing Examiner believes the objection really challenges the Candidate's description of the district in which he is seeking office.

Objector's Argument

Objector argues that *Jones v. Municipal Officers Electoral Board* supports his assertion that a hearing officer must evaluate the contents of a statement of economic interests and that *Jones* is controlling on this matter. 112 Ill. App. 3d 926.

Candidate's Argument

Candidate argues that hearing examiners have no authority to evaluate a candidate's statement of economic interests according to *Requena, Welch, Troutman v. Keys*, and *Crudup v. Sims, Welch*, 147 Ill. 2d 40; *Requena*, 295 Ill. App. 3d 728; *Crudup v. Sims*, 292 Ill. App. 3d 1075 (1st Dist. 1997); *Troutman v. Keys*, 156 Ill. App. 3d 247 (1st Dist. 1987).

Analysis

Objection 10 requires a three-part analysis: (1) whether the Hearing Examiner and Board have the jurisdiction to evaluate a candidate's statement of economic interests; (2) if the Hearing Examiner and Board have jurisdiction to evaluate a candidate's statement of economic interests, whether Candidate's office description contained therein is sufficient; and (3) if the Hearing Examiner and Board have jurisdiction to evaluate a candidate's statement of economic interests and Candidate's office description in his Statement of Economic Interests is insufficient, whether the proper remedy is removal from the ballot.

Part one of the analysis is whether the Hearing Examiner and Board have the jurisdiction to evaluate a candidate's statement of economic interests.

Section 10-8 provides that an objector "shall file an objector's petition" in the principal office or permanent branch office of the State Board of Elections or "in the office of the election authority or local election official with whom the certificate of nomination, nomination papers or petitions are on file." 10 ILCS 5/10-8. Accordingly, the Illinois Supreme Court has noted that the "Election Code grants the election authority or local election official with whom certificates of nomination and nomination papers or petitions 'are on file' the power and authority to hear objections thereto." *Welch*, 147 Ill. 2d at 46 (citing Section 10-8). The Illinois Supreme Court has further stated that "[b]ecause statements of economic interests are not on file with such election authorities or officials, [those election authorities or officials] do not have jurisdiction over challenges to [statements of economic interests]." *Id.* at 47.

There is discrepancy in Illinois case law regarding such jurisdiction. Compare *Cortez v. Municipal Officers Electoral Board*, 2013 IL App (1st) 130442 (court determined that a candidate's filing of the wrong statement of economic interests was not in substantial compliance); *Requena*, 295 Ill. App. 3d 728 (court considered a candidate's office description on the statement of economic interests and receipt and stated what the office description "[i]deally ... should include"); *Bryant v. Cook County Electoral Board*, 195 Ill. App. 3d 556 (1st Dist. 1990) (relying on Section 10-10, which provides that the electoral board shall decide whether nominating papers are valid and objections should be sustained, and Section 7-12(8), which provides that nominating papers are invalid if a candidate does not file a statement of economic

interest in relation to the candidacy, the court determined that the Electoral Board had jurisdiction to evaluate a candidate's statement of economic interests); *Jones v. Municipal Officers Electoral Board*, 112 Ill. App. 3d 926 (court considered and determined the sufficiency of a candidate's office description); *Miceli v. Lavelle*, 114 Ill. App. 3d 311 (1st Dist. 1983) (court determined that a statement of economic interests filed for one position could not be used to satisfy the requirements of the Election Code regarding his candidacy for a second position); *with Welch*, 147 Ill. 2d 40; *O'Donaghue v. Cook County Officers Electoral Board*, 295 Ill. App. 3d 493 (1st Dist. 1998) (referencing *Troutman*, 156 Ill. App. 3d 247)³⁶; *Troutman*, 156 Ill. App. 3d 247 ("[T]he electoral board has not been given statutory jurisdiction to inquire into the truth and accuracy of a statement of economic interests which, as here, has been filed.")³⁷.

The Election Code does not give the Hearing Examiner and/or Board jurisdiction to evaluate Candidate's statement of economic interests pursuant to the plain wording of Section 10-8 and the Illinois Supreme Court's determination in *Welch*, 147 Ill. 2d at 46.³⁸ The Hearing Examiner believes the Illinois Supreme Court's determination in *Welch* is binding, and the contrary Illinois case law that came after *Welch* is distinguishable.³⁹ *Cortez* is distinguishable because it dealt with a candidate's filing of the wrong statement of economic interests, not the contents thereof. 2013 IL App (1st) 130442 at ¶ 23. *Requena* is distinguishable because it dealt with a candidate's office description in the statement of economic interests and receipt. 295 Ill. App. 3d at 730. There is no dispute that Candidate has filed the correct form for his Statement of Economic Interests, and Candidate's receipt identifies the office as "Candidate for Illinois Circuit Court Judge." See Objector's Exhibit 8; Exhibit L, pg. 2. Neither *Cortez* nor *Requena* addresses the Illinois Supreme Court's determination in *Welch* that election authorities and officials have no jurisdiction to evaluate a candidate's statement of economic interests. *Cortez*, 2013 IL App (1st) 130442; *Requena*, 295 Ill. App. 3d 728.

Part two of the analysis is whether, if the Hearing Examiner and Board have jurisdiction to evaluate a candidate's statement of economic interests, Candidate's office description contained therein is sufficient. Even if the Board disagrees with the Hearing Examiner's determination that he and the Board do not have jurisdiction to evaluate Candidate's Statement of Economic Interests, Candidate's office description contained therein is sufficient.

³⁶ In *O'Donaghue*, the court distinguished from *Troutman* in considering whether the Electoral Board could review the content of a statement of economic interests because, unlike in *Troutman* where the nominating papers and statement of economic interests were filed with different agencies, the candidate's nominating papers and statement of economic interests were both required to be filed with the county clerk. 295 Ill. App. 3d at 498. "Under the reasoning of *Troutman* and *Welch*, the Electoral Board may review the statement, at least to assure that the candidate has filed the proper form. *Id.*

³⁷ In *Troutman*, the court determined that circuit courts have original jurisdiction to inquire into the contents of a statement of economic interests. 156 Ill. App. 3d at 253. See also *Crudup*, 292 Ill. App. 3d at 1078,

³⁸ None of the four cases that have distinguished *Welch* have done so on the issue of jurisdiction. See *Cortez*, 2013 IL App (1st) 130442 (discussing remedy of removal from the ballot for filing the wrong statement of economic interests form); *Lawrence v. Board of Election Commissioners of the City of Chicago*, 524 F. Supp. 2d 2011 (N.D. Ill. 2007) (discussing the remedy of removal from the ballot in an equal protection claim); *Cardona v. Board of Election Commissioners of the City of Chicago*, 346 Ill. App. 3d 342 (1st Dist. 2004) (discussing the statement of candidacy receipt); *Crudup*, 292 Ill. App. 3d 1075 (discussing the remedy of removal from the ballot).

³⁹ *Bryant*, *Jones v. Municipal Officers Electoral Board* and *Miceli* came before *Welch*.

Objection 10 references only Candidate's failure to specify the vacancy sought and does not reference Candidate's indication of 7th Judicial District in his Statement of Economic Interests. Because Objector is limited to his Verified Objector's Petition, the Hearing Examiner recommends that the Board not consider Objector's assertions in relation to Candidate's indication of 7th Judicial District. *See* State Board of Elections, Rules of Procedure, Rule 10. Even if the Board considers Objector's assertions in relation to Candidate's indication of "7th Judicial District", Candidate's office description contained therein is sufficient.

Section 7-12(8) requires, in part, that a candidate filing nominating papers must also file a statement of economic interests pursuant to the Illinois Governmental Ethics Act "in relation to his candidacy." 10 ILCS 5/7-12(8). Section 4A-103 of the Illinois Governmental Ethics Act provides a model or template for candidates to use, indicating that the statement of economic interests "shall contain substantially the following". The template states, in part, "each office or position of employment for which this statement is filed". 5 ILCS 420/4A-103.⁴⁰

Candidate's Statement of Economic Interests is in substantial compliance with the Illinois Election Code. Section 7-12(8) only requires that a Statement of Economic Interests be filed "in relation to [a candidate's] candidacy" and Section 4A-103 only indicates that Statement of Economic Interests shall contain the candidate's "office or position of employment for which this statement is filed." 10 ILCS 5/7-12(8); 5 ILCS 420/4A-103. Neither Section 7-12(8) nor Section 4A-103 require a candidate to state the vacancy of the office he is seeking. 10 ILCS 5/7-12(8); 5 ILCS 420/4A-103.

Candidate's Statement of Economic Interests states "Circuit Court Judge – 7th Judicial District." Objector's Exhibit 8. The Illinois Constitution designates the office as "Circuit Judge". Ill. Const. art. VI, § 7. Accordingly, Candidate has sufficiently described the office sought in his Statement of Economic Interests pursuant to Section 7-12(8), Section 4A-103, and the Illinois Constitution.

Unlike nominating petitions and the statement of candidacy, which can be read together to achieve substantial compliance, the statement of economic interests is read as a separate document. *See Jones v. Municipal Officers Electoral Board*, 112 Ill. App. 3d at 928-29 (noting that "the statement [of economic interests] is filed separately from other nomination papers and with a different governmental agency" and "makes no reference to those papers"). Accordingly, whether Candidate's Statement of Economic Interests substantially complies with the Election Code is considered only with respect to the Statement of Economic Interests itself.

The purpose of filing a statement of economic interests is to "facilitate the public's right to information regarding the candidate's financial dealings with the unit of government in which he or she seeks office." *Atkinson*, 2013 IL App (2nd) 130139. Candidate's failure to specify the vacancy sought and indication of 7th Judicial District in his Statement of Economic Interests does not affect the public's right to information about Candidate's financial dealings with the unit of government in which Candidate seeks office, namely the 7th Judicial Circuit, because the

⁴⁰ Section 4A-106 states that the statement of economic interests required of persons listed in item (e) "shall be filed with the Secretary of State," and Section 4A-103 is the provision that addresses statements of economic interests filed with the Secretary of State. 5 ILCS 420/4A-106. *See also* 5 ILCS 420/4A-103.

Statement of Economic Interests states “Circuit Court Judge – 7th Judicial District” and there is no 7th Judicial District in Illinois. Objector’s Exhibit 8. *See Sullivan*, 225 Ill. App. 3d 691. *See also supra*, Part B.1.a (Objection 9).

The case law cited by Objector is distinguishable. In *Jones v. Municipal Officers Electoral Board*, the case cited by Objector and discussed above with respect to jurisdiction, the candidate described his office sought as “3rd Ward” on his statement of economic interests pursuant to Section 10-5.1. 112 Ill. App. 3d at 927-28. The First District Appellate Court stated, “It thus appear clear to us that the inclusion of the words “3rd Ward” does not describe the office of alderman of the Third Ward, as required not only by section 4A-104 of the Ethics Act but also by section 10-5 of the Election Code....” *Id.* at 929 (discussing Section 4A-104 of the Ethics Act, which is a provision analogous to Section 4A-103 for statements of economic interests for other offices). The court further determined that inclusion of the office sought in the statement of economic interests is a mandatory requirement, noting that the provisions of the Election Code are designed to facilitate the public’s right to know of any financial dealings “between a candidate and the unit of government in which he seeks office. *Id.* at 929-30. The court further stated, “if the office is not revealed, then the truth of the candidate’s answers on his statement can never be tested, for they are not made in reference to any office or position of employment. *Id.* at 930. Unlike in *Jones v. Municipal Officers Electoral Board*, where the candidate identified “alderman” but did identify “3rd Ward,” Candidate’s Statement of Economic Interests identifies Circuit Court Judge and incorrectly states 7th Judicial District. *Jones v. Municipal Officers Electoral Board* does not discuss statement of or failure to state the vacancy sought. This matter is distinguishable because Candidate’s failure to identify the vacancy sought and statement of 7th Judicial District instead of 7th Judicial Circuit do not impair the public’s right to know of any financial dealings between Candidate and the unit of government in which Candidate seeks office and the truth of Candidate’s answers can be sufficiently tested in reference to the office he seeks, because Candidate’s Statement of Economic Interests states Circuit Court Judge and there is no 7th Judicial District in Illinois. *See Sullivan*, 225 Ill. App. 3d 691. *See also supra*, Part B.1.a (Objection 9).

Furthermore *Cortez*, a case cited by Objector in response to another objection and discussed above with respect to jurisdiction, is further distinguishable. In *Cortez*, the candidate filed the wrong statement of economic interests. 2013 IL App (1st) 130442 at ¶ 23. The First District Appellate Court determined that the statement of economic interests did not substantially comply with the Election Code because “the candidate simply sidestepped the issue of whether or not to be truthful by answering entirely different questions,” such that the “apparent purpose” of the statement of economic interests was “circumvented.” *Id.* at 37, 40. Here, Candidate’s failure to specify the vacancy sought in his Statement of Economic Interests does not frustrate the purpose of the statement of economic interests to facilitate the public’s right to information regarding Candidate’s financial dealings with the unit of government in which he seeks office.

Candidate’s description of office as “Circuit Court Judge – 7th Judicial District” substantially complies with the requirement of Section 7-12(8) and Section 4A-104.

Part three of the analysis is whether, if the Hearing Examiner and Board have jurisdiction to evaluate a candidate's statement of economic interests and Candidate's office description in his Statement of Economic Interests is insufficient, the proper remedy is removal from the ballot.

Illinois courts have determined that removal from the ballot is not a "permissible sanction" for filing a statement of economic interests that is not "true, correct and complete when filed ..." due to an inadvertence or mistake on the part of the person filing the statement." *Requena*, 295 Ill. App. 3d at 733 (citing *Crudup*, 292 Ill. App. 3d 1075) (in *Requena*, the court specifically disagreed with the sanction of removal from the ballot in *Jones v. Municipal Officers Electoral Board*). See also *Welch*, 147 Ill. 2d 40, 51 (1992).⁴¹ Accordingly, even if Candidate's Statement of Economic Interests is insufficient for failure to specify the vacancy sought, removal from the ballot is not a permissible sanction.

The Hearing Examiner recommends that the Board deny Objection 10 and find that the Hearing Examiner and Board lack jurisdiction to evaluate the Candidate's Statement of Economic Interests.

C. Constitutional violation

In Objection 21, Objector asserts that Candidate's false statements in his Statement of Candidacy and Nominating Petitions violate the Illinois Constitution. Because Objector conceded Objection 21 in his Response and withdrew Objection 21 during the January 2, 2014 hearing, the Hearing Examiner recommends a finding that Candidate's nominating papers do not violate the Illinois Constitution.

- 1. Your Objector states that the candidate has filed a false Statement of Candidacy and has made a false statement on each and every one of the nominating petition sheets to the affect that he resides at 2024 Greenbriar, Springfield, IL 62704 when, in fact, he actually legally resides at 2014 [sic] Greenbriar, Leland Grove, IL 62704. Such false representations of residency are in violation of ILL.CONST. (1970) art. IV, §2(c), making the Candidate disqualified from, and ineligible to seek and serve in, the office for which the nomination papers were filed. (Objection 21)**

Analysis

Objector conceded and withdrew Objection 21 in his Response and during the January 2, 2014 hearing.

⁴¹ Cases removing candidate's from the ballot in regard to a statement of economic interests are distinguishable. See *Cortez*, 2013 IL App (1st) 130442 (wrong statement of economic interests form filed) ("permitting a candidate to fill out the wrong Statement would open the process up to the possibility of subterfuge) (discussed in this Part with respect to jurisdiction and substantial compliance); *Lawrence v. Board of Election Commissioners of the City of Chicago*, 524 F. Supp. 2d 2011 (N.D. Ill. 2007) (receipt for filing statement of economic interests was filed after the last day for filing) (discussed in Footnote 38 with respect to jurisdiction).

D. Pattern of fraud and false swearing

In Objection 22, Objector asserts that Candidate's nominating papers demonstrate a pattern of fraud and false swearing. For the following reasons, the Hearing Examiner recommends a finding that Candidate's nominating papers do not show a pattern of fraud and false swearing.

1. **Your Objector states that there will be presented substantial, clear, unmistakable, and compelling evidence that establishes a "pattern of fraud and false swearing" along with an "utter and contemptuous disregard for the mandatory provisions of the Election Code." An examination of the nominating papers will reveal a pervasive and systematic attempt to undermine the integrity of the electoral process. Consequently, your Objector states that this Electoral Board "cannot close its eyes and ears" but will be compelled to void the entire nominating petition as being illegal and void in its entirety under the principles set forth in [various cases cited]. This allegation is made with specific reference to the 4 of the 112 nominating petition sheets personally circulated by the candidate (nos. 5, 6, 7 and 8), the Statement of Candidacy, and the receipt of filing for the Statement of Economic Interests. Your Objector will produce documentary and testimonial evidence that will establish inter alia that: (a) Candidate, John "Mo" Madonia, made multiple sworn affidavits falsely stating under oath that he resides at an address within the City of Springfield, Illinois, when, in fact, he does not, rendering such oaths false and perjurious [sic]. (Objection 22)**

Objector's Argument

Objector cites to several cases in support for his argument that Candidate's nominating papers show a "pattern of fraud and false swearing". *Cunningham*, 2012 IL App (1st) 120529; *Crossman v. The Board of Election Commissioners of the City of Chicago*, 2012 IL App (1st) 120291; *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill. App. 3d 1111 (1st Dist. 2007); *Canter v. Cook County Officers Electoral Board*, 170 Ill. App. 3d 364 (1st Dist. 1988); *Huskey*, 15 Ill. App. 3d 201; and *Fortas v. Dixon*, 122 Ill. App. 3d 697 (1st Dist. 1984). Specifically, Objector argues that Candidate's statements that he resides in Springfield establishes a pattern of false swearing and the number of deficiencies in Candidate's nominating papers show a total disregard for compliance with the Election Code requirements. During the January 2, 2014 hearing, Objector conceded that there is no evidence of attempted or actual fraud by Candidate.

Candidate's Argument

Candidate argues that there is no basis for Objector's claim that there is a pattern of false swearing.

Analysis

Each of the cases cited by Objector is largely distinguishable from the matter at hand.⁴² All allegations of false swearing raised by Objector concern Candidate's description of his address, residence and/or place of voter registration. In all, Candidate's deficiencies do not rise to the level of a "pattern of false swearing". Moreover, even if, in all, Candidate's deficiencies rise to the level of a "pattern of false swearing", they do not rise to the level of seriousness in any of the cases cited by Objector or known by this Hearing Examiner that found a "pattern of false swearing".

The Hearing Examiner recommends the Board deny Objection 22 and find that Candidate's nominating papers do not show a "pattern of fraud and false swearing".

E. Remaining objections

1. Failure to state or select nomination

In Objections 19 and 20, Objector asserts that Candidate does not sufficiently assert he is a candidate for nomination and requests his name be on the ballot for nomination in his Statement of Candidacy and Nominating Petitions. For the following reasons, the Hearing Examiner recommends a finding that Candidate's statement that he is a candidate and request that his name be on the ballot comply or substantially comply with Section 7-10.

- a. **Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he is a candidate for nomination to the office specified. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the statement "I am a candidate for nomination." The failure to so state is insufficient at law. (Objection 19)**

Objector's Argument

Objector argues that Section 7-10 requires a candidate to state in his or her Statement of Candidacy that he or she is a candidate for nomination, such that Candidate was required to state nomination instead of election or, at least, select nomination from "nomination/election."

⁴² See *Cunningham*, 2012 IL App (1st) 120529 (allegations that petitions contained false signatures and that a circulator failed to swear his petition papers in front of a notary); *Crossman*, 2012 IL App (1st) 120291 (changes made to nominating petitions after signed by circulator and notarized); *Harmon*, 371 Ill. App. 3d 1111 (large number of signatures invalidated by the clerk because "the purported signatory did not sign in his or her own proper person" and evidence suggested the circulator allowed one individual to sign multiple lines on the petition with different names); *Canter*, 170 Ill. App. 3d 364 (circulator refused to testify regarding nominating petitions that he allegedly signed but had not circulated); *Huskey*, 15 Ill. App. 3d 201 (circulator admitted that sometimes she was not the person presenting nomination petitions for signature and that many signatures were not genuine because they were signed by someone other than the person named); *Fortas*, 122 Ill. App. 3d 697 (some nominating petitions were circulated by someone other than the person who signed the oath and signing circulator used or appeared to have used white out to cover up one circulator's name and insert her own).

Objector further argues that Candidate has not substantially complied with Section 7-10 because there is a significant distinction between offices that are nominated and offices that are elected.

Candidate's Argument

Candidate argues that Objector has cited no authority for the proposition that a candidate must state or select nomination or election. Candidate further argues that because there is no possibility of election for this office, the distinction raised by Objector between offices for nomination and offices for election is a distinction without a difference. Candidate further argues that his Statement of Candidacy adequately describes his declaration that he is running for the Republican nomination to be elected at the general primary.

Analysis

Section 7-10 contains no express requirement that the statement of candidacy state that the candidate is "a candidate for nomination." See 10 ILCS 5/7-10. However, Section 7-10 provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form". The template states, in part, "I am a candidate for nomination (for election in the case of committeeman and delegates and alternate delegates)." 10 ILCS 5/7-10.

There is no dispute that Candidate is seeking nomination rather than election. Furthermore, it is clear from the language of Section 7-10 that Candidate could only be seeking nomination, as he is not seeking the office of committeeman, delegate or alternate delegate. The failure to circle or select nomination is a technical error. Courts have found substantial compliance to satisfy Section 7-10 where deviations from the requirements of Section 7-10 were technical in nature. See, e.g., *Panarese*, 104 Ill. App. 3d 627; *Madden*, 105 Ill. App. 3d 900. Furthermore, *Lewis* allows Candidate's nominating papers to be read together to reflect that Candidate is seeking nomination for the office. 63 Ill. 2d at 52-53. The heading of Candidate's Nominating Petitions clearly states that Candidate "shall be a candidate of the REPUBLICAN party for the nomination for the office hereinafter specified, to be voted for at the primary election to be held on March 18, 2014." Exhibit L, pgs. 4-117. Candidate's Nominating Petitions are the documents actually seen by voters and signatories.

The Hearing Examiner recommends that Objection 19 be denied by the Board and that the Board find Candidate's Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

- b. **Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he requests his name be printed upon the official ballot for nomination. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the candidate to specify how the candidate's name be printed upon the official ballot. The failure to designate "nomination" negates the authority of the Election Authorities to certify the ballot for the Primary Election and is insufficient at law. (Objection 20)**

Objector's Argument

Objector argues that Section 7-10 requires a candidate to state in his or her Statement of Candidacy that he or she hereby requests that his or her name be printed upon the official ballot for nomination, such that Candidate was required to state or select nomination from "nomination/election." Objector again argues that Candidate has not substantially complied with Section 7-10 because there is a significant distinction between nominated and elected offices.

Candidate's Argument

Candidate again argues that Objector has cited no authority that requires a candidate to state or select nomination, that the distinction between offices for nomination and election is a distinction without a difference, and that his Statement of Candidacy adequately describes his declaration that he is running for nomination rather than election.

Analysis

Section 7-10 states that the statement of candidacy "shall request that the candidate's name be placed upon the official ballot", among other things. 10 ILCS 5/7-10. Section 7-10 also provides a model or template for candidates to use, indicating that the statement of candidacy should be in "substantially the following form". The template states, in part, "I hereby request that my name be printed upon the official primary ballot for nomination for (or election to in the case of committeemen and delegates and alternate delegates)." 10 ILCS 5/7-10.

Again, there is no dispute that Candidate is seeking nomination rather than election. Furthermore, it is clear from the language of Section 7-10 that Candidate could only be seeking nomination, as he is not seeking the office of committeeman, delegate or alternate delegate. The failure to circle or select nomination is a technical error and Candidate's Nominating Petitions make clear that he is seeking nomination. *See supra*, Part II.E.1.a (Objection 19). Accordingly, Candidate's request to be placed on the ballot substantially complies with Section 7-10. *See supra*, Part II.E.1.a (Objection 19).

The Hearing Examiner recommends that Objection 20 be denied by the Board and that the Board find Candidate's Statement of Candidacy is in compliance or substantial compliance with Section 7-10.

2. Failure to include or complete Section 7-10.2 name change statement

In Objections 17 and 18, Objector asserts that Candidate's failure to indicate whether he has changed his name in the past three years in his Nominating Petitions and Statement of Candidacy fails to comply with Section 7-10.2. For the following reasons, the Hearing Examiner recommends a finding that Candidate's Nominating Petitions and Statement of Candidacy comply with the requirements of Section 7-10.2.

- a. **Your Objector states that the candidate has filed multiple Nominating Petition pages failing to include a statement indicating whether he has changed his name during the past three years. The Illinois Election Code, 10 ILCS 5/7-10.2 requires such a statement to be provided to voters. The failure to so state is insufficient at law. (Objection 17)**

Objector's Argument

Objector argues that because Candidate includes a Section 7-10.2 statement on his Statement of Candidacy, a Section 7-10.2 statement must be included on Candidate's Nominating Petitions.

Candidate's Argument

Candidate argues that Section 7-10.2 does not require a Section 7-10.2 statement to be included on Candidate's Nominating Petitions.

Analysis

Section 7-10.2 provides, in pertinent part:

If a candidate has changed his or her name, whether by a statutory or common law procedure in Illinois or any other jurisdiction, within 3 years before the last day for filing the petition or certification for that office, whichever is applicable, then (i) the candidate's name on the petition or certificate must be followed by "formerly known as (list all prior names during the 3-year period) until name changed on (list date of each such name change)" and (ii) the petition or certificate must be accompanied by the candidate's affidavit stating the candidate's previous names during the period signified in (i) and the date or dates each of those names was changed; failure to meet these requirements shall be grounds for denying certification of the candidate's name for the ballot or removing the candidate's name from the ballot, as appropriate, but these requirements do not apply to name changes resulting from adoption to assume an adoptive parent's or parents' surname, marriage to assume a spouse's surname, or dissolution of marriage or declaration of invalidity of marriage to assume a former surname.

No evidence was provided that Candidate has changed his name within the last three years. Pursuant to the plain language of Section 7-10.2, the requirements in Section 7-10.2 are not applicable if a candidate has not changed his or her name within the last three years.

The Hearing Examiner recommends that the Board deny Objection 17 and find that Candidate's Nominating Petitions are in compliance with Section 7-10.2.

- b. Your Objector states that the candidate has filed a Statement of Candidacy including a statement pursuant to 10 ILCS 5/7-10.2, but failed to provide the information required by statute, or that said information was inapplicable to this candidate. The failure to affirmatively make such a statement is insufficient at law. (Objection 18)

Objector's Argument

Objector argues that if a candidate includes a statement in reference to Section 7-10.2 on his or her form, the statement cannot be left blank because such blank statement could cause disarray or fraud. Objector further argues that pursuant to *Cortez*, people running for public office should be able to follow the directions of the Election Code as written and provided. 2013 IL App (1st) 130442.

Candidate's Argument

Candidate argues that he has not changed his name within the last three years and that the plain wording of Section 7-10.2 states that a Section 7-10.2 statement is only required if a candidate has changed his name within the last three years. Candidate further argues that Objector has cited no authority for the proposition that a candidate who includes a blank Section 7-10.2 statement on his statement of candidacy cannot leave blank and must fill in the Section 7-10.2 statement.

Analysis

The relevant language of Section 7-10.2 is quoted above. *See supra*, Part II.E.2.a (Objection 17). No evidence was provided that Candidate has changed his name within the last three years. Pursuant to the plain language of Section 7-10.2, the requirements in Section 7-10.2 are not applicable if a candidate has not changed his or her name within the last three years. *See supra*, Part II.E.2.a (Objection 17). Objector provides, and the Hearing Examiner knows of, no authority to support Objector's proposition that a candidate who includes a blank Section 7-10.2 statement on his statement of candidacy cannot leave blank and must fill in the Section 7-10.2 statement.

The Hearing Examiner recommends that the Board deny Objection 18 and find that Candidate's Statement of Candidacy is in compliance with Section 7-10.2.

3. Uniform size

In Objection 15, Objector asserts that the nominating petition page numbered "113" and the following unnumbered page of Candidate's Nominating Petitions are insufficient because they are not of uniform size. For the following reasons, the Hearing Examiner recommends a finding that the nominating petition page numbered "113" and the following unnumbered page of Candidate's Nominating Petitions fail to comply with Section 7-10 and should be stricken.

- a. **Your Objector states that the candidate has filed Nominating Petitions of differing sizes. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petitions be of “uniform size”. The failure to so [sic] causes the filing to be insufficient at law. (Objection 15)**

Objector's Argument

Objector argues that the nominating petitions are not of uniform size and, accordingly, Candidate's filing is insufficient. Objector further argues that the proper remedy is to strike all of Candidate's Nominating Petitions.

Candidate's Argument

Candidate argues that this objection should be dismissed because Objector has failed to specify which pages are deficient or how the defect would invalidate all the nominating petitions. Candidate further argues that if this Hearing Examiner determines that the nominating petition page numbered “113” and the following unnumbered page are deficient because they are not of uniform size, the correct remedy is to strike that petition, not to invalidate all of the nominating petitions.

Analysis

Section 7-10 requires that each sheet of the petition for nomination be “of uniform size.” 10 ILCS 5/7-10. Candidate's nominating petition page numbered “113” and the following unnumbered page are not of uniform size with Candidate's remaining nominating petitions in that a portion of the nominating petitions starting on the petition page numbered “113” carries over onto the following unnumbered page. Accordingly, Candidate's nominating petition page numbered “113” and the following unnumbered page fail to comply with Section 7-10 and are deficient. However, Objector provides no authority for his assertion that the remedy for said deficiency is to render the entire filing insufficient, and this Hearing Examiner knows of no such authority. Accordingly, the proper remedy for this violation of Section 7-10 is to strike the nominating petition page numbered “113” and the following unnumbered page.

The Hearing Examiner recommends that the Board grant Objection 15 and strike the nominating petition page numbered “113” and the following unnumbered page because they do not comply with Section 7-10. If these two petition pages are stricken, Candidate still has sufficient signatures to remain on the ballot.

F. Candidate's nominating papers in the aggregate

Finally, Objector argues that, when viewed in the aggregate, Candidate's nominating papers do not comply with the Election Code. For the following reasons, the Hearing Examiner recommends a finding that, in the aggregate, Candidate's nominating papers substantially comply with the Election Code.

Objector's Argument

Objector argues that, when viewed in the aggregate, Candidate's nominating papers cannot be in substantial compliance with the Election Code because of the number of deficiencies.

Candidate's Argument

Candidate argues that Objector has no authority for the notion that nominating papers that substantially comply with the requirements of the Election Code fail due to the number of deficiencies they contain or allegedly contain. Candidate further argues that all the deficiencies raised by Objector are minor and that his nominating papers substantially comply with the requirements of the Election Code. Candidate also asserts that because ballot access is favored and denial of ballot access is an extreme sanction, he must be placed on the ballot. Candidate further argues that none of the deficiencies raised by Objector defeat or threaten the Illinois legislature's intent for an open, fair and honest election process.

Analysis

The Verified Objector's Petition does not assert Objector's aggregation argument. Because Objector is limited to his Verified Objector's Petition, the Hearing Examiner recommends that the Board not consider Objector's assertions in relation to aggregation. *See* State Board of Elections, Rules of Procedure, Rule 10. Even if the Board considers Objector's assertions in relation to aggregation, Candidate's nominating papers substantially comply with the Election Code.

Ballot access is "substantial right not lightly to be denied," and the Election Code balances a candidate's right to ballot access with "the need to protect the integrity of the petition process and to encourage qualified voters' participation." *Welch*, 147 Ill. 2d at 56; *Samuelson*, 2012 IL App (1st) 120581 at ¶45. *See also Siegel*, 385 Ill. App. 3d at 460.

Objector argues that Candidate's nominating papers present numerous deficiencies. As discussed above, Candidate's nominating papers comply or substantially comply with the Election Code despite each deficiency (except the deficiency as to uniform size), and none of the deficiencies hinders or frustrates the integrity of the election process. *See generally*, Part II.

Objector further argues that even if nominating papers comply or substantially comply with the Election Code, despite the presence of deficiencies, the aggregation of such deficiencies defeats substantial compliance with the Election Code.

Objector cites, and the Hearing Examiner finds, no authority for his assertion that Candidate's substantial compliance with the requirements of the Election Code is defeated by viewing the objections to Candidate's nominating papers in the aggregate.

The deficiencies in Candidate's nominating papers, in the aggregate, do not hinder or frustrate the integrity of the election process. Accordingly, the substantial compliance with the Election Code by Candidate's nominating papers is not defeated.

The Hearing Examiner recommends the Board deny Objector's argument that, in the aggregate, Candidate's nominating papers do not substantially comply with the requirements of the Election Code and find that Candidate's nominating papers do substantially comply with the requirements of the Election Code.

III. Candidate's Motion to Strike and Dismiss Verified Objector's Petition

Based upon the analysis of the recommendations above, the Hearing Examiner recommends that the Candidate's Motion to Strike and Dismiss be granted in part and denied in part as follows:

With regard to Candidate's standing to bring the Verified Objector's Petition, the Hearing Examiner recommends that the Board deny the Candidate's Motion to Strike and Dismiss. *See supra*, Part II.A.3.a (Candidate's Motion to Dismiss Verified Objector's Petition).

With regard to Objections 4, 5, 6, and 8 (challenging Candidate's description of his address, residence and/or place of voter registration), the Hearing Examiner recommends that the Board deny Candidate's Motion to Strike and Dismiss because said objections raised questions of fact and law. With regard to Objections 9, 10, 11, 12, 13, and 14 (challenging Candidate's description of the office he seeks), the Hearing Examiner recommends that the Board deny Candidate's Motion to Strike and Dismiss because said objections raised questions of fact and law. With regard to Objections 19 and 20 (asserting Candidate's failure to state that he seeks nomination rather than election), the Hearing Examiner recommends that the Board deny Candidate's Motion to Strike and Dismiss because said objections raised questions of fact and law. With regard to Objection 22 (asserting a pattern and practice of false swearing relating to Candidate's address), the Hearing Examiner recommends that the Board deny Candidate's Motion to Strike and Dismiss because said objections raised questions of fact and law.

With regard to Objection 15 (asserting that certain Nominating Petition pages are not of uniform size), the Hearing Examiner recommends that the Board deny Candidate's Motion to Strike and Dismiss.

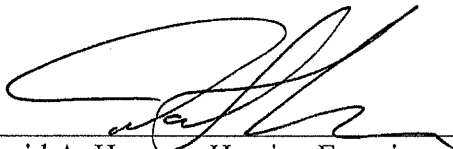
With regard to Objection 7 (county in Nominating Petitions), Objection 16 (city in Nominating Petitions), and Objections 17 and 18 (asserting Candidate's failure to affirmatively state that he has not changed his name in the past three years), the Hearing Examiner recommends that the Board grant Candidate's Motion to Strike and Dismiss.

With regard to Objection 21 (asserting a constitutional violation), the Hearing Examiner recommends that the Board find Candidate's Motion to Strike and Dismiss is mooted.

CONCLUSION

In summary, the Hearing Examiner recommends the Board grant, in part, and deny, in part, Candidate's Motion to Strike and Dismiss the Verified Objector's Petition and further recommends that the Board deny the objections made to Candidate's nominating papers (other than Objection 15 regarding uniform size). Accordingly, the Hearing Examiner recommends the Board place Candidate on the ballot at the primary election to be held on March 18, 2014.

Dated: January 14, 2014



David A. Herman, Hearing Examiner

Robert Kent Gray, Jr.,
Petitioner-Objector,
v.
John "Mo" Madonia,
Respondent-Candidate.

INTRODUCTION

1. Objector Robert Kent Gray, Jr. resides at 2116 Illini Road, Leland Grove, Illinois, 62704 in the City of Leland Grove, County of Sangamon and State of Illinois and is a duly qualified, legal and registered voter at this address.
2. The Objector's interest in filing the following objections is that of a citizen desirous of seeing to it that the laws governing the filing of nomination papers for nomination of the Republican Party to the office of Judge of the Circuit Court, 7th Judicial Circuit, Vacancy of the Honorable Leo J. Zappa, Jr. and State of Illinois are properly complied with, and that only qualified candidates appear on the ballot for said office.
3. The Objector makes the following objections to the purported nomination papers ("Nomination Papers") of John "Mo" Madonia as a candidate for the office of Judge of the Circuit Court, 7th Judicial Circuit, Vacancy of Leo J. Zappa, Jr. and State of Illinois ("Office") to be voted for at the Primary Election on March 18, 2014 ("Election"). The Objector states that the Nomination Papers are insufficient in law and fact for the following reasons:

4. Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at "2024 Greenbriar, in the City of Springfield, Illinois." The address shown on the candidate's Statement of Candidacy is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy contain such information and be in the form

PRINCIPAL OFFICE
STATE BOARD OF ELECTIONS

provided by the statute. The statute mandates that the Statement of Candidacy "shall set out the address of such candidate". The failure to so state is insufficient at law and is factually a false affidavit made under sworn oath.

5. Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, indicating that he resides at "2024 Greenbriar, in the City of Springfield, Illinois" and FURTHER states "that I am a qualified voter therein". The address shown on the candidate's Statement of Candidacy is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy contain such information and be in the form provided by the statute. The statute mandates that the Statement of Candidacy "shall set out the address of such candidate" and that the candidate lives "therein". The failure to be a "qualified voter therein" is insufficient at law and is factually a false affidavit made under sworn oath.
6. Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at "2024 Greenbriar, Springfield, IL 62704". The address shown on the candidate's Nominating Petitions is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petition contain such information and be in the form provided by the statute. The statute mandates that the petition sheets containing signatures "shall contain...[the candidate's] place of residence". The failure to so state is insufficient at law and is factually a false statement.
7. Your Objector states that the candidate has filed Nominating Petitions indicating that he resides at "2024 Greenbriar, Springfield, IL 62704". The address shown on the candidate's Nominating Petitions does not indicate what county he resides in. The 7th Judicial Circuit is statutorily defined and comprised of six Illinois counties and the failure to indicate residency in one of those six counties is insufficient at law.
8. Your Objector states that the candidate has filed multiple Nominating Petition pages indicating that he, as circulator, "do hereby certify that I reside at 2024 Greenbriar, in the City of Springfield, zip code 62704". The address shown on the candidate's Nominating Petitions is not within the corporate boundaries of the City of Springfield, and is, in fact, within the corporate boundaries of a different city. The Illinois Election Code, 10 ILCS 5/7-10 requires that the circulator's affidavit be in the form provided by the statute. The statute requires the circulator to "certify" his address. The failure to so state is insufficient at law and is factually a false affidavit made under oath.
9. Your Objector states that the candidate has filed a Statement of Candidacy, sworn under oath, which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by

the statute. The statute requires the candidate to "set out...the office for which he is a candidate". The failure to so state is insufficient at law.

10. Your Objector states that the candidate has filed a Statement of Economic Interests which fails to in any way identify which judicial vacancy he is seeking of the multiple vacancies existing in the 7th Judicial Circuit. The failure to so state is insufficient at law.
11. Your Objector states that the candidate has filed Nominating Petitions which identify the judicial vacancy he is seeking as that of "Leo J. Zappa". The Chief Justice of the Illinois Supreme Court Certified the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out...the office for which he is a candidate". The failure to so state is insufficient at law.
12. Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the judicial vacancy being sought by the candidate differently. The Illinois Supreme Court Certified the vacancy on the 7th Circuit Court as that of "Leo J. Zappa, Jr." The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out...the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." Neither document correctly sets out the "exact vacancy...the candidate is seeking". The failure to so is insufficient at law.
13. Your Objector states that the candidate has filed Nominating Petitions and a Statement of Candidacy which identify the district of the judicial vacancy being sought by the candidate differently. The candidate described the vacancy as being in the "7th Judicial District" on his Statement of Candidacy (in two places) and as being in the "7th Judicial Circuit" on his nominating petitions. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The statute requires the candidate to "set out...the office for which he is a candidate". The 2014 Candidate's Guide published by the Illinois State Board of Elections, states that "The State Board of Elections is provided with a certification from the Chief Justice of the Illinois Supreme Court delineating which vacancies will be filled by election in the year 2014." And that, "The nominating petitions and Statement of Candidacy must state the exact vacancy or the exact additional judgeship that the candidate is seeking." The candidate's documents set out two different vacancies and not the "exact vacancy...the candidate is seeking". The failure to so state is insufficient at law.

14. Your Objector states that the candidate has filed multiple Nominating Petition pages describing the office sought in the heading of the petition as both "Circuit Court Judge" and, directly below, as "Circuit Judge". The Judicial Candidate Packet provided by the Illinois State Board of Elections, indicates that the correct description of the office is that of "Judge of the Circuit Court". The failure to so correctly describe is insufficient at law.
15. Your Objector states that the candidate has filed Nominating Petitions of differing sizes. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Nominating Petitions be of "uniform size". The failure to so causes the filing to be insufficient at law.
16. Your Objector states that the candidate has filed multiple Nominating Petition pages failing to indicate whether he lives in a "city, village, [or] unincorporated area". The failure to so state is insufficient at law.
17. Your Objector states that the candidate has filed multiple Nominating Petition pages failing to include a statement indicating whether he has changed his name during the past three years. The Illinois Election Code, 10 ILCS 5/7 - 10.2 requires such a statement to be provided to voters. The failure to so state is insufficient at law.
18. Your Objector states that the candidate has filed a Statement of Candidacy including a statement pursuant to 10 ILCS 5/7 - 10.2, but failed to provide the information required by statute, or that said information was inapplicable to this candidate. The failure to affirmatively make such a statement is insufficient at law.
19. Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he is a candidate for nomination to the office specified. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the statement "I am a candidate for nomination." The failure to so state is insufficient at law.
20. Your Objector states that the candidate has filed a Statement of Candidacy failing to indicate that he requests that his name be printed upon the official ballot for nomination. The Illinois Election Code, 10 ILCS 5/7-10 requires that the Statement of Candidacy be in the form provided by the statute. The form provided by the statute requires the candidate to specify how the candidate's name be printed upon the official ballot. The failure to designate "nomination" negates the authority of the Election Authorities to certify the ballot for the Primary Election and is insufficient at law.
21. Your Objector states that the candidate has filed a false Statement of Candidacy and has made a false statement on each and every one of the nominating petition sheets to the affect that he resides at 2024 Greenbriar, Springfield, IL 62704 when, in fact, he actually legally resides at 2014 Greenbriar, Leland Grove, IL 62704. Such false representations of residency are in violation of ILL.CONST. (1970) art. IV, §2(c),

making the Candidate disqualified from, and ineligible to seek and serve in, the office for which the nomination papers were filed.

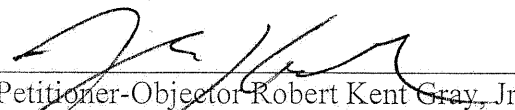
22. Your Objector states that there will be presented substantial, clear, unmistakable, and compelling evidence that establishes a "pattern of fraud and false swearing" along with an "utter and contemptuous disregard for the mandatory provisions of the Election Code." An examination of the nominating papers will reveal a pervasive and systematic attempt to undermine the integrity of the electoral process. Consequently, your Objector states that this Electoral Board "cannot close its eyes and ears" but will be compelled to void the entire nominating petition as being illegal and void in its entirety under the principles set forth in *Cunningham v. Schaefflein*, 2012 IL App (1st) 120529, 32 – 42, 969 N.E.2d 861, 360 Ill.Dec. 816; *Harmon v. Town of Cicero Municipal Officers Electoral Board*, 371 Ill.App.3d 1111, 864 N.E.2d 996, 309 Ill.Dec. 755 (1st Dist. 2007); *Canter v. Cook County Officers Electoral Board*, 170 Ill.App.3d 364, 523 N.E.2d 1299, 1300 – 1301, 120 Ill.Dec. 388 (1st Dist. 1988); *Huskey v. Municipal Officers Electoral Board for Village of Oak Lawn*, 156 Ill.App.3d 201, 509 N.E.2d 555, 556 – 558, 108 Ill.Dec. 859 (1st Dist. 1987); and *Fortas v. Dixon*, 122 Ill.App.3d 697, 462 N.E.2d 615, 617, 78 Ill.Dec. 496 (1st Dist. 1984). This allegation is made with specific reference to the 4 of 112 nominating petition sheets personally circulated by the candidate (nos. 5,6,7 and 8), the Statement of Candidacy, and the receipt of filing for the Statement of Economic Interests. Your Objector will produce documentary and testimonial evidence that will establish inter alia that:

- (a) Candidate, John "Mo" Madonia, made multiple sworn affidavits falsely stating under oath that he resides at an address within the City of Springfield, Illinois, when, in fact, he does not, rendering such oaths false and perjurious.

23. Because of the above-listed irregularities in the Nomination Papers, the Nomination Papers are invalid in their entirety.

WHEREFORE, the Objector requests: a) a hearing on the objections set forth herein; b) a ruling that the Nomination Papers are insufficient in law and fact and not in compliance with the laws of the State of Illinois, and c) a ruling that the name of John "Mo" Madonia shall be stricken and not appear and BE NOT PRINTED on the OFFICIAL BALLOT for nomination to the office of Judge of the Circuit Court, 7th Judicial Circuit, vacancy of the Honorable Leo J. Zappa, Jr. and State of Illinois, to be voted for at the Primary Election to be held March 18, 2014.

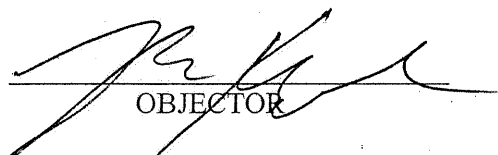
Respectfully Submitted,


Petitioner-Objector Robert Kent Gray, Jr.

Petitioner-Objector
Robert Kent Gray, Jr.
2116 Illini Road
Leland Grove, IL 62704

VERIFICATION

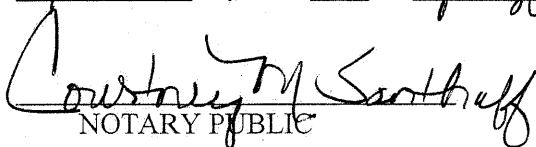
The undersigned as Objector, first being duly sworn on oath, now deposes and says that he has read this VERIFIED OBJECTOR'S PETITION and that the statements therein are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true and correct.


OBJECTOR

Robert Kent Gray, Jr.
2116 Illini Road
Leland Grove, IL 62704

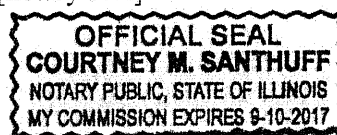
State of Illinois)
County of Sangamon) ss.

Subscribed to and Sworn before me, a Notary Public, by Robert Kent Gray, Jr., the Objector, on this the 9th day of 2013, at Springfield Illinois.


NOTARY PUBLIC

My Commission expires: 9-10, 2017.

[notary seal]



Objections/Candidates withdrawn – informational

- a. Necessary v. Byrnes, 13SOEBGP100 – candidate withdrew
- b. Reeves v. Goncher, 13SOEBGP501 – objection withdrawn
- c. Becker & Walton v. Severson, 13SOEBGP504 – objection withdrawn
- d. Hanford & Anseeuw v. Reyes, 13 SOEBGP510 – candidate withdrew
- e. Peterson & Huckelberry v. White, 13 SOEBGP512 – candidate withdrew
- f. Smith, Jr. v. Alden, 13 SOEBGP 513 – candidate withdrew
- g. Graham v. Jonathan, 13 SOEBGP 518 – candidate withdrew
- h. Ramsey v. Jernigan, 13 SOEBGP 519 – candidate withdrew
- i. Thompson v. Wooten, 13 SOEBGP 523 – candidate withdrew
- j. Franklin v. Chandler, 13 SOEB GP 526 – candidate withdrew